RAILWAY LABOR ACT AMENDMENTS RELATING TO NRAB

HEARINGS

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 701

A BILL TO AMEND THE RAILWAY LABOR ACT IN ORDER TO PROVIDE FOR ESTABLISHMENT OF SPECIAL ADJUSTMENT BOARDS TO RESOLVE DISPUTES OTHERWISE REFERABLE TO THE NATIONAL RAILROAD ADJUSTMENT BOARD

H.R. 704

A BILL TO AMEND THE RAILWAY LABOR ACT IN ORDER TO MAKE ALL AWARDS OF THE NATIONAL RAILROAD ADJUSTMENT BOARD FINAL

H.R. 706

A BILL TO AMEND THE RAILWAY LABOR ACT IN ORDER TO PROVIDE FOR ESTABLISHMENT OF SPECIAL ADJUSTMENT BOARDS UPON THE REQUEST EITHER OF REPRESENTATIVES OF EMPLOYEES OR OF CARRIERS TO RESOLVE DISPUTES OTHERWISE REFERABLE TO THE NATIONAL RAILROAD ADJUSTMENT BOARD

JUNE 8, 9, AND 15, 1965

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RAILWAY LABOR ACT AMENDMENTS RELATING TO NRAB

TUESDAY, JUNE 8, 1965

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 2218, Rayburn House Office Building, Hon. Harley O. Staggers (chairman of the subcommittee) presiding.

Mr. STAGGERS. The committee will come to order.

The hearings beginning this morning are on H.R. 701, 704, and 706, introduced by our colleague on the committee, Mr. Williams. These bills would amend the Railway Labor Act to require the establishment of special boards of adjustment to deal with disputes referable to the National Railway Adjustment Board, and to provide that money awards made by the National Railway Adjustment Board shall be final and conclusive on the parties.

Currently, there are long delays in the settlement of disputes arising out of grievances on the interpretation or application of collective bargaining agreements primarily on the first and third divisions of the National Railway Adjustment Board.

We are hearing today from our colleague, Mr. Williams, and from representatives of the Railroad Brotherhoods concerning the need for establishment of some mechanism for eliminating these delays. Tomorrow we expect to hear from a representative of the Air Transport Association concerning the method of adjusting disputes in the air transport industry. I have requested that the ATA send a witness to testify on this subject to explain their procedures, since as I understand it, there is no comparable backlog of unresolved disputes in the air transport industry. Labor relations in the air transport industry are covered by all of the procedures of the Railway Labor Act except those procedures establishing the National Railway Adjustment Board.

In addition, we will hear from a representative of the rail carriers.

At this point in the record the text of the bills will be inserted together with reports thereon which the committee has received.

(The bills and reports follow:)

[H.R. 701, 89th Cong., 1st sess.]

A BILL To amend the Railway Labor Act in order to provide for establishment of special adjustment boards to resolve disputes otherwise referable to the National Railroad Adjustment Board

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 Second of the Railway Labor Act is amended by adding at the end thereof the following:

"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, the carrier shall join in an agreement establishing such a board within thirty days from the date such request is made. The jurisdiction of 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 with respect to any dispute or group of disputes the members of the board so designated 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 carrier to comply therewith on or before a 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."

[H.R. 704, 89th Cong., 1st sess.]

A BILL To amend the Railway Labor Act in order to make all awards of the National Railroad Adjustment Board final

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second sentence of section 3 First (m) of the Railway Labor Act is amended by striking out ", except insofar as they shall contain a money award".

[H.R. 706, 89th Cong., 1st sess.]

A BILL To amend the Railway Labor Act in order to provide for establishment of special adjustment boards upon the request either of representatives of employees or of carriers to resolve disputes otherwise referable to the National Railroad Adjustment Board

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 Second of the Railway Labor Act is amended by adding at the end thereof the following:

"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 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 jurisdiction of 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 with respect to any dispute or group of disputes the members of the board so designated 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."

NATIONAL RAILWAY LABOR CONFERENCE,
Chicago, Ill., February 24, 1965.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House Office Building, Washington, D.C.

DEAR CONGRESSMAN HARRIS: This replies to your letters of February 9, 1965, addressed to Mr. J. E. Wolfe, chairman, National Railway Labor Conference, requesting his comments on bills, H.R. 701, 704, and 706, introduced in the House of Representatives in January 1965. In the absence of Mr. Wolfe, who is ill, the undersigned is replying to your inquiry on behalf of the National Railway Labor Conference.

The above referred to bills are identical to three bills (H.R. 8982, 8983, and 8984) which were introduced during the 88th Congress, and on which hearings were held by the Subcommittee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce of the House of Representatives. The position of the National Railway Labor Conference was fully presented to the subcommittee at that time, and remains the same with respect to H.R. 701, 704, and 706.

We respectfully submit that there is no need for the proposed legislation; but if the committee decides to hold hearings thereon, we would appreciate an opportunity to appear.

Yours truly,

W. S. MACGILL,
Chairman, Southeastern Carriers' Conference Committee.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., June 21, 1965.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for a report from the Bureau of the Budget on H.R. 704, a bill to amend the Railway Labor Act in order to make all awards of the National Railroad Adjustment Board final.

H.R. 704 would eliminate the exception in the Railroad Labor Act which provides that money awards of the National Railroad Adjustment Board are not "final and binding."

There would be no objection, from the standpoint of the administration's program, to the enactment of H.R. 704.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

Mr. STAGGERS. Our first witness this morning will be our colleague, Mr. Williams.

STATEMENT OF HON. JOHN BELL WILLIAMS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. WILLIAMS. Thank you, Mr. Chairman. I appreciate the opportunity to give testimony before the subcommittee on this legislation. As you will recall, this subcommittee held several days of hearings during the last Congress on bills identical to those on which the current hearings are being held, but time did not permit the completion of those hearings.

The problem to which these bills are directed involves the long delays in the settlement of individual grievances arising in the railroad industry involving working conditions and alleged violations of collective bargaining agreements. Under existing procedures, where an employee has a grievance, it is processed by his union with the local representatives of the carrier. If the dispute cannot be settled on the properties of the carrier, it is referred to the National Railroad Adjustment Board in Chicago. This process on the properties can take a year or more.

After the dispute is referred to the Board in Chicago, it is processed over a period of months and then is docketed. If the case involves dismissal or suspension, it is expedited, and, therefore, is usually decided in about a year from the date it is docketed. If the case is not expedited, it takes its turn on the docket, and later is considered and decided.

At the current rate of productivity, it would take about 7½ years for all of the cases currently on the docket of the First Division to be disposed of; it would take a little over 1 year to dispose of all the cases on the docket of the Second Division; about 3½ years to dispose of the docket of the Third Division; and about 5 months to dispose of the cases on the docket of the Fourth Division.

In other words, Mr. Chairman, an employee who has a grievance may have to wait as much as 10 years before a decision is reached disposing of this grievance. When the Board issues an order settling the grievance, if this award contains an order for the payment of money, the carrier involved may refuse to comply and the employee must then try his case over again in the courts.

These, in general, are the problems these bills are designed to deal with.

Now, Mr. Chairman, I will proceed to describe generally the makeup of the National Railroad Adjustment Board.

The Railway Labor Act, as amended June 21, 1934, established this Board, which started to function about August 1, 1934. The Board is divided into four separate divisions consisting of all the industry's nonoperating and operating unions and management. They serve as regular members on each division with equal representation.

For example, the First Division consists of the five operating unions. Each union appoints one member to serve as its representative on the Division, and management appoints five representatives as their members.

When the regular members of a division find themselves deadlocked and unable to agree on cases before them, request is then made to the National Mediation Board for the appointment of a referee to decide the deadlocked cases.

The Federal Government pays for the expense of the operation of the Board, which includes the salaries of the referees, with the exception that the labor organizations pay the salary of their members and the management pays the salary of their members on the Board.

My research has revealed that the Board has failed to function adequately as intended. This is especially true on the First and Third Divisions of the Board. We find here that practically every case is deadlocked thereby requiring a referee to decide the case. This requires both sides to submit briefs and have oral argument before a

referee on each case. This snail-paced operation has brought about a buildup of a huge backlog of cases on these divisions.

The First Division has accumulated such a huge backlog of cases that an employee is forced to wait as long as 10 years before receiving a decision on his case.

One possible solution to this problem is the passage of H.R. 701 and H.R. 704. Not only will this legislation erase the present inequities and dispense of the huge backlog of cases that now exists, but it will also save the Federal Government thousands of dollars.

Mr. Chairman, one additional point. Since introducing this, it has been called to my attention that an amendment to H.R. 704 is needed in order to make sure that awards will be final and binding. I, therefore, suggest the following amendment be added at the end of the bill:

Add at the end of the bill the following:

"SEC. 2. (a) The first sentence of section 3, first of the Railway Labor Act is amended by striking out 'shall be prima facie evidence of the facts therein stated', and substituting therefor 'shall be conclusive on the parties.'

"(b) The last sentence of section 3, first of the Railway Labor Act is amended by adding at the end thereof the following: '*Provided, however*, That such order may not be set aside except for failure of the division to comply with the requirements of this act; 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.' "

Mr. Chairman, it was called to my attention several years ago that a very bad situation existed in this Railroad Adjustment Board operation. On investigation I found that a very bad situation did, indeed, exist. I have offered the pending legislation as a possible solution to that problem.

It is possible that valid objections may be raised to the legislation before us, but, Mr. Chairman, insofar as I can determine this is the only solution that has been suggested. If someone has a better approach to suggest that will remedy what is a very bad situation, I personally would be amendable to such suggestion.

At this point I offer this legislation as the only solution to this problem that has yet been suggested to me, in the hope that this Congress will see fit to remedy a most disgraceful situation and one which certainly works extreme hardships on many deserving employees in the railroad industry.

Thank you, Mr. Chairman.

Mr. STAGGERS. Thank you, Mr. Williams, we appreciate the fact that you, the author of these bills, have come to give us an explanation of the situation that brought on the introduction of the bills, and your understanding of what should be done.

Mr. Springer, do you have any questions?

Mr. SPRINGER. No questions.

Mr. WILLIAMS. Mr. Chairman, I wish to present, and ask unanimous consent to be admitted with my statement, a table of statistical data abstracted from the reports of the National Mediation Board, giving a rather graphic picture of the Board's performance over a 30-year period of time in the handling and disposition of cases.

Also, Mr. Chairman, a table of information relating to subjects in the U.S. courts to enforce National Railroad Adjustment awards going back to 1945. I ask unanimous consent that these be accepted as exhibits to my statement.

Mr. STAGGERS. Without objection, they will be incuded in the record.

(The information follows:)

30TH ANNUAL REPORT, NATIONAL MEDIATION BOARD, FISCAL YEAR ENDED JUNE 30, 1964

TABLE 9.—*Cases docketed and disposed of by the National Railroad Adjustment Board, fiscal years 1935–64, inclusive*

ALL DIVISIONS

Cases	30-year period 1935-64	1964	1963	1962	1961	1960
Open and on hand at beginning of period	----------	6,864	6,461	5,968	5,957	5,645
New cases docketed	61,916	1,731	1,901	1,873	1,870	1,799
Total number of cases on hand and docketed	61,916	8,595	8,362	7,841	7,827	7,444
Cases disposed of	55,356	2,035	1,552	1,380	1,859	1,487
Decided without referee	11,949	49	60	73	255	75
Decided with referee	23,672	1,346	1,184	924	871	688
Withdrawn	19,735	640	308	383	733	724
Open cases on hand close of period	6,560	6,560	6,810	6,461	5,968	5,957
Heard	784	784	1,166	1,679	1,769	1,735
Not heard	5,776	5,776	5,644	4,782	4,199	4,222

1ST DIVISION

Open and on hand at beginning of period	----------	3,847	3,238	2,928	3,104	2,872
New cases docketed	40,363	738	809	687	823	799
Total number of cases on hand and docketed	40,363	4,585	4,047	3,615	3,927	3,671
Cases disposed of	36,301	523	254	377	999	567
Decided without referee	10,090	37	31	42	217	47
Decided with referee	10,378	103	112	152	226	228
Withdrawn	15,833	383	111	183	556	292
Open cases on hand close of period	4,062	4,062	3,793	3,238	2,928	3,104
Heard	185	185	173	167	136	179
Not heard	3,877	3,877	3,620	3,071	2,792	2,925

2D DIVISION

Open and on hand at beginning of period	----------	355	379	288	365	282
New cases docketed	4,776	198	217	287	216	305
Total number of cases on hand and docketed	4,776	553	596	575	581	587
Cases disposed of	4,506	283	241	196	293	222
Decided without referee	688	1	5	13	8	7
Decided with referee	2,979	267	213	165	270	110
Withdrawn	839	15	23	18	15	105
Open cases on hand close of period	270	270	355	379	288	365
Heard	55	55	41	80	106	186
Not heard	215	215	314	299	182	179

TABLE 9.—*Cases docketed and disposed of by the National Railroad Adjustment Board, fiscal years 1935–64, inclusive*—Continued

3D DIVISION

Cases	30-year period 1935-64	1964	1963	1962	1961	1960
Open and on hand at beginning of period		2,598	2,731	2,646	2,399	2,408
New cases docketed	14,829	715	779	773	733	615
Total number of cases on hand and docketed	14,829	3,313	3,510	3,419	3,132	3,023
Cases disposed of	12,632	1,116	912	688	486	624
Decided without referee	871	4	18	10	17	3
Decided with referee	9,100	893	768	534	342	309
Withdrawn	2,661	219	126	144	127	312
Open cases on hand close of period	2,197	2,197	2,598	2,731	2,646	2,399
Heard	520	520	904	1,340	1,443	1,296
Not heard	1,677	1,677	1,694	1,391	1,203	1,103

4TH DIVISION

Open and on hand at beginning of period		64	113	106	89	83
New cases docketed	1,948	80	96	126	98	80
Total number of cases on hand and docketed	1,948	144	209	232	187	163
Cases disposed of	1,917	113	145	119	81	74
Decided without referee	300	7	6	8	13	18
Decided with referee	1,215	83	91	73	33	41
Withdrawn	402	23	48	38	35	15
Open cases on hand close of period	31	31	64	113	106	89
Heard	24	24	48	92	84	74
Not heard	7	7	16	21	22	15

Suits in the U.S. courts to enforce National Railroad Adjustment Board awards

	Style	District court	Date	Court of appeals	Date	NRAB award reviewed by court and enforced or denied on merits	NRAB award not reviewed by court because of being final and binding	Enforcement ordered	Enforcement denied	Comment
2d circuit	*Hanks* v. *Delaware & H.R. Corp.*	63 F. Supp. 161	1945			Yes		Yes		
Do	*Crowley* v. *Delaware & H.R. Corp.*	63 F. Supp. 164	1945			Yes			Yes	
Do	*Joint Council Dining Car Employees* v. *Delaware, L. & W. R. Co.*	Not reported		157 F. 2d 417	1946					The only question presented was whether the statute of limitations barred the enforcement suit. Court of appeals held that limitations had not run and returned the case for trial on the merits.
3d circuit	*Dahlberg* v. *Pittsburgh & L. E. R. Co.*	do		138 F. 2d 121	1943	Yes			Yes	
Do	*Kirby* v. *Pennsylvania R. Co.*	92 F. Supp. 417	1952	188 F. 2d 793	1951					District court held the award was too indefinite to enforce and it dismissed the complaint as not stating the cause of action on which relief could be granted. The court of appeals reversed and ordered the district court to hear the case on the merits.
Do	*Brotherhood of Railway & Steamship Clerks* v. *Pennsylvania R. Co.*	107 F. Supp. 924	1952							Motion to dismiss was denied by the district court and placed on the calendar for trial on the merits.
Do	*Powell* v. *Pennsylvania R. Co.*	166 F. Supp. 448	1958							The suit was settled by stipulation.
4th circuit	*Virginian Ry. Co.* v. *System Federation No. 40, Etc.*	Not reported		131 F. 2d 840	1942	Yes		Yes		
Do	*Atlantic Coast Line R. Co.* v. *Brotherhood of Ry. & S. S. Clerks, Etc.*	do		210 F. 2d 812	1954	Yes			Yes	
Do	*Brotherhood of Ry. Clerks, Etc.* v. *Atlantic Coast Line R. Co.*	154 F. Supp. 71	1957	253 F. 2d 753	1958	Yes			Yes	
Do	*Hanson* v. *Chesapeake & O. Ry. Co.*	198 F. Supp. 325	1961							The district court denied the railroad's motion to dismiss and the case was set for trial on the merits of the award.
5th circuit	*Estes* v. *Union Terminal Co.*	Not reported		89 F. 2d 768	1937					District court had dismissed the suit for failure of the NRAB to place certain employees on notice of its hearings. The court of appeals returned the case for trial on the merits of the award.

Do	*Smith* v. *Texas & N.O.R. Co.*	32 F. Supp. 1013	1940			Yes			Yes	
Do	*Thomas* v. *Texas & N. O. R. Co.*	Not reported		118 F. 2d 75	1941				Yes	
Do	*System Federation No. 59, Etc.* v. *Louisiana & A. Ry. Co.*	30 F. Supp. 909 (34 F. Supp. 89, rehearing denied).	1940	119 F. 2d 509	1941	Yes			Yes	Certiorari denied, 314 U.S. 656, 62 S. Ct. 108, 86 H. Ed. 526.
Do	*Railway Express Agency* v. *Order of Railroad Telegraphers.*	Not reported		137 F. 2d 46	1943	Yes			Yes	
Do	*Crist* v. *Public Belt R. R. Commission.*	93 F. Supp. 103	1950			Yes		Yes		
Do	*Ward* v. *New Orleans Public Belt Railroad.*	97 F. Supp. 1002	1951	195 F. 2d 829	1952	Yes		Yes		
Do	*Smith* v. *Louisville & N. R. Co.*	112 F. Supp. 388	1953			Yes			Yes	
Do	*Hodges* v. *Atlantic Coast Line Railroad Company.*			310 F. 2d 1438	1962	Yes		Yes		
Do	*Jones* v. *Central of Georgia Ry. Co.*	220 F. Supp. 909	1963	331 F. 2d 649	1964	Yes			Yes	
Do	*Alabama State Federation of Labor* v. *Kurn, et al.*	46 F. Supp. 385	1942						Yes	Dismissed for reason that suit was brought against trustee of bankrupt railroad for enforcement of award which was against the railroad corporation.
6th circuit	*Brotherhood of Maintenance of Way Employees* v. *Nashville, C.& St. L. Ry. Co.*	56 F. Supp. 559	1944			Yes			Yes	
Do	*Odom* v. *Thompson*	85 F. Supp. 477	1949			Yes		Yes		
Do	*Thomas* v. *New York C.& St. L. R. Co.*	Not reported		185 F. 2d 614	1950	Yes			Yes	
Do	*Brotherhood of Railway & S. Clerks* v. *Railway Express Agency.*	137 F. Supp. 653	1955	238 F. 2d 181	1956	Yes			Yes	
Do	*Russ* v. *Southern Ry. Co.*	218 F. Supp. 634	1963	334 F. 2d 224	1964	Yes			Yes	
7th circuit	*Order of Sleeping Car Conductors* v. *Pullman Co.*	47 F. Supp. 599	1942							The district court ordered a trial on the merits of the award.
Do	*Railroad Yardmasters of North America* v. *Indiana Harbor Belt R. Co.*	70 F. Supp. 914	1947	166 F. 2d 326	1948				Yes	Court held the award and order were too uncertain and indefinite to furnish the basis for an enforcement suit.
Do	*Knudsen* v. *Chicago & Northwestern Ry. Co.*	106 F. Supp. 48	1952						Yes	Court held the award and order were not sufficiently definite and certain so as to make a prima facie case in favor of the plaintiff.
Do	*Brotherhood of Sleeping Car Porters* v. *Pullman Co.*	Not reported		200 F. 2d 160	1952	Yes			Yes	The district court ordered the award enforced. The court of appeals reversed the decision of the district court and ordered enforcement to be denied.

Suits in the U.S. courts to enforce National Railroad Adjustment Board awards—Continued

	Style	District court	Date	Court of appeals	Date	NRAB award reviewed by court and enforced or denied on merits	NRAB award not reviewed by court because of being final and binding	Enforcement ordered	Enforcement denied	Comment
8th circuit	*Cook* v. *Des Moines Union Ry. Co.*	16 F. Supp. 810	1936			Yes		Yes		
Do	*Order of Railroad Telegraphers* v. *New Orleans, T. & M. Ry. Co.*	135 F. Supp. 825	1954	229 F. 2d 59	1956				Yes	Court held award void for reason that it had been rendered without notice to indispensable parties. Certiorari denied, 350 U.S. 997, 100 L. Ed. 861, 766 S. Ct. 548.
Do	*Boos* v. *Railway Express Agency*	153 F. Supp. 14	1957	253 F. 2d 896	1958	Yes			Yes	
9th circuit	*Southern Pac. Co.* v. *Joint Council Dining Car Employees.*	Not reported		165 F. 2d 26	1947	Yes			Yes	The district court had ordered the NRAB award enforced. The court of appeals denied enforcement. Certiorari denied, 333 U.S. 838, 92 L. Ed. 1122, 68 S. Ct. 608.
Do	*Gunther* v. *San Diego & A. E. Ry. Co.*	161 F. Supp. 295	1958			Yes			Yes	
Do	*Callan* v. *Great Northern Ry. Co.*	Not reported		299 F. 2d 908	1961	Yes			Yes	

Mr. STAGGERS. Our next witness will be Mr. Harold C. Crotty, chairman of the Railway Labor Executives Association Committee on Railway Labor Act. Mr. Crotty?

STATEMENT OF HAROLD C. CROTTY, CHAIRMAN, RAILWAY LABOR EXECUTIVES ASSOCIATION COMMITTEE ON RAILWAY LABOR ACT, AND PRESIDENT, BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

Mr. CROTTY. Good morning, Mr. Chairman.

Mr. STAGGERS. It is good to have you with us. Please give your name, the name of your association, and you may proceed.

Mr. CROTTY. Thank you.

Mr. Chairman and members of the committee, my name is Harold C. Crotty. I am president of the Brotherhood of Maintenance of Ways Employees.

I am accompanied here this morning by our counsel, Mr. Richard Lyman, of the law firm of Mulholland, Hickey & Lyman.

I appear here this morning as the chairman of the Committee on the Railway Labor Act of the Railway Labor Executives' Association and as spokesman for the 22 railway labor organizations affiliated with that association, a list of which is contained in my written statement and which, if I may, I will file with the reporter.

American Railway Supervisors' Association.
American Train Dispatchers' Association.
Brotherhood of Locomotive Firemen and Enginemen.
Brotherhood of Maintenance of Way Employees.
Brotherhood of Railroad Signalmen of America.
Brotherhood of Railroad Trainmen.
Brotherhood Railway Carmen of America.
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.
Brotherhood of Sleeping Car Porters.
Communication-Transportation Employees' Union.
Hotel and Restaurant Employees and Bartenders International Union.
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers.
International Brotherhood of Electrical Workers.
International Brotherhood of Firemen and Oilers.
International Organization of Masters, Mates and Pilots of America.
National Marine Engineers' Beneficial Association.
Order of Railway Conducters and Brakemen.
Railroad Yardmasters of America.
Railway Employees' Department, AFL–CIO.
Sheet Metal Workers' International Association.
Switchmen's Union of North America.
Seafarers' International Union of North America.

The standard railway labor organizations which I represent are favorable to the adoption of H.R. 704, but, for reasons which I will explain later in my statement, it is their view that the bill must be amended if its objective is to be accomplished.

In this connection we endorse fully the amendment that Congressman Williams has offered here this morning. We believe it will accomplish fully what we think should be accomplished and feel it is necessary if the objectives of the legislation are to be met.

Before I discuss the provisions of the bill, I should like to comment on the existing provisions of the Railway Labor Act (Railway Labor

Act sec. 3), to which it relates and to tell you some of the background and experiences which have led to the need for the enactment of this legislation.

The Congress amended the Railway Labor Act in 1934 and among other things established the National Railroad Adjustment Board to handle disputes between carriers and their employees which grew out of grievances or out of the interpretation and application of agreements concerning rates of pay, rules, and working conditions.

This is a bipartisan board consisting of 36 members, 18 of whom are selected by the carriers and 18 by those labor organizations which represent railroad employees and which are national in scope.

For the purposes of operation, the Board is divided into four divisions each of which handles disputes between carriers and certain specified classifications of railroad employees. The First Division, for example, handles disputes involving train and engine service employees, the Second Division those involving shop craft employees, the Third Division disputes of station, tower, and telegraph employees, clerical and maintenance of way and certain other employees, and the Fourth Division disputes not within the jurisdiction of the other three divisions.

Since it was recognized that because of the bipartisan composition of the Board a deadlock was possible, the act makes provision for the appointment of a neutral referee. In these cases the referee sits with the Division of the Board and breaks the deadlock. I might add that the lack of provision for resolving deadlocks was one of the main causes for the breakdown of the former grievance handling machinery.

It is important to keep in mind that the jurisdiction of the Adjustment Board extends only to disputes growing out of grievances or out of the interpretation or application of existing agreements concerning rates of pay, rules, and working conditions which have been characterized by the U.S. Supreme Court as "minor" disputes. It has no jurisdiction over disputes arising out of negotiations for changes in existing agreements. Disputes of the latter type, which the U.S. Supreme Court has termed "major" disputes, are handled under procedures prescribed in other sections of the act.

The disputes over which the Adjustment Board has jurisdiction might concern an employee's seniority rights; might very well involve the question of whether a man has or has not been paid the proper amount of compensation for a particular class of work; may very well concern the separation of an employee from service—whether or not he had been unjustly dismissed; could relate to the question of whether the carrier improperly assigned to others the work to which an employee is entitled under his own collective bargaining agreement; and other similar claims of contract violation.

The existing law also provides in section 3, first (m) that the awards of the National Railroad Adjustment Board—

> shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award.

It further provides in section 3, first (p) that if a carrier does not—

> comply with an order of any division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such an award was made—

May file in the U.S. district court a petition to enforce the award and order.

The findings and order of the division of the Adjustment Board are made prima facie evidence of the facts therein stated and the district court is empowered to make such order and to enter such judgment as may be appropriate to enforce or set aside the order of the Board.

While the Board is an administrative agency created by Federal statute, it functions more as a board of arbitration and its awards resemble the awards of an arbitration board. Indeed, it has been stated by the U.S. Supreme Court—

there was a general understanding between both the supporters and opponents of the 1934 amendments that the provisions dealing with the Adjustment Board were to be considered as compulsory arbitration in this limited field (*Brotherhood of Railroad Trainmen et al.* v. *Chicago River and Indiana Railroad et al.*, 353 U.S. 30).

For a considerable period following its creation in 1914, the National Railroad Adjustment Board operated as an effective means of settling grievances of employees and disputes with respect to the interpretation and application of collective bargaining agreements in the railroad industry. Strikes over these matters were almost nonexistent, and disputes were settled at a minimum of expense and without the necessity of resorting to court action.

In recent years, however, an accumulating body of court decisions with respect to the Board's jurisdiction and functions, the effect of its creation upon alternative methods of disputes settlement, and particularly the legal force and effect of its awards, have resulted in the emasculation of the Board as an effective tribunal. The amount of litigation resulting from the refusal of the carriers to apply the awards and orders of the Board has greatly increased, and judicial interpretation of the Railway Labor Act, as I shall later demonstrate, has resulted in a completely inequitable procedure for the disposition of grievances and claims of employees.

For a fuller appreciation of the inequitable situation in which railway employees have been placed, the increasing frustration of the congressional purposes underlying the Board's creation, and the kind of corrective legislation required, some consideration must be given to the background of dealing with employee grievances and contract disputes in the railroad industry, and the judicial precedents to be taken into account.

Although there had been considerable unionization of railroad employees prior to World War I, the unions had not been generally recognized by the carriers and they had not succeeded in negotiating many agreements with the employers. The period of governmental control during the war brought about drastic changes, with the Government giving full recognition to the unions and the great majority of railroad employees becoming organized.

The Director General entered into national agreements with most of the unions fixing wages, rules, and working conditions, and set up bipartisan boards of adjustment which operated very successfully in disposing of disputes which arose with respect to the interpretation and application of those agreements. These boards were national in scope and each one dealt with particular classes of employees. Nu-

merous disputes were handled and disposed of with virtually no deadlocks (Garrison, "The National Railroad Adjustment Board: A Unique Administrative Agency," 46 Yale Law Journal 567, 570).

However, the return of the railroads to private control and termination of the wartime boards brought about a period of confusion and chaos in the handling of employee grievances and contract disputes.

Aside from a few privately established boards, the only agency for interpreting and applying existing rules and working agreements was the U.S. Railroad Labor Board, established by the Transportation Act of 1920. It was hampered not only by the fact that it also was charged with handling disputes over the making of agreement rules and establishing wage rates, but even more by its lack of power to enforce any of its decisions, so that their effect was merely advisory, and could be disregarded with impunity.

Dissatisfaction of both employees and the carriers resulted in their agreement upon new legislation to take the place of the Transportation Act of 1920, which was enacted as the Railway Labor Act of 1926. That act called upon the carriers and employees to create, by agreement, bipartisan boards of adjustment to handle disputes arising out of grievances or the interpretation and application of agreements.

The 1926 act also created a governmental agency, the Board of Mediation, with functions comparable to the present National Mediation Board. Though disputes not settled by the system boards of adjustment could be referred to the Board of Mediation, its functions were purely mediatory and conciliatory, and if it could not persuade the parties to submit to voluntary arbitration, disputes unsettled by the system boards remained unsettled.

Furthermore, under the 1926 act there was no way to compel the parties to create the desired system boards, and those which were created, having a bipartisan membership equally divided between labor and management representatives, often deadlocked.

As a result, grievances and contract claims were not decided, and there was a complete breakdown of the machinery for resolving these disputes in the railroad industry. The situation neared crisis proportions, and as a result Congress adopted the 1934 Amendments to the Railway Labor Act, creating the present National Railroad Adjustment Board (*Elgin, Joliet & Eastern R. Co.* v. *Burley*, 325 U.S. 711, 726).

As I have heretofore stated, under the 1934 amendments, the Board was given authority to hear and adjudicate grievances and contract claims submitted to it and to issue awards which were to be legally enforceable by the Federal courts and provision was made for the appointment of a neutral referee to break deadlocks. Thus, it appeared at that time that the principal flaws in the previous machinery for the settlement of minor disputes in the railroad industry had been corrected.

In this connection it is significant to remember that prior to the creation of the National Railroad Adjustment Board in 1935, employees claiming a breach of the collective bargaining agreement by a carrier were not limited to a resort to the available dispute settlement machinery, but could either go to court in a suit for breach of contract, or seek to enforce their claims through economic pressures on the carriers.

For some time after the Board was created, it was felt that these alternative remedies were still available to the employees. However, subsequent court decisions have established that these alternatives are no longer available, and have at the same time pointed up the need for corrective legislation to remedy the gross inequities which have developed under the present law.

It is now well settled by court decisions of the U.S. Supreme Court that the Adjustment Board possesses exclusive jurisdiction over these claims arising out of minor disputes, and that the courts, both State and Federal, have no jurisdiction over such claims. (*Slocum* v. *Delaware, L. & W. R. Co.*, 339. *Order of Railway Conductors* v. *Southern R. Co.*, 339 U.S. 255.) Thus under the present law the Board is the only tribunal to which railroad employees may submit their grievances or disputes over the interpretation and application of agreements and their former rights to restort to the courts no longer exist.

Similarly, other Supreme Court decisions have established that the alternative of resort to economic pressures is no longer available to the employees as a means of enforcing their claims. (*Brotherhood of R.T.* v. *Chicago R. & I.R. Co.*, 353 U.S. 30. *Locomotive Engineers* v. *Louisville & N. R. Co.*, 373 U.S. 33.) The Board, therefore is not only the sole tribunal to which employees may turn for relief for contract violations, it is their exclusive remedy in such cases. They cannot strike in support of their claim nor can they strike to enforce an award which is favorable to them.

It is apparent that in the absence of any alternative remedy for the settlement of their disputes, the question of the force and effect of the Board's decisions, and the method of obtaining compliance with them by the carriers, is of paramount importance. It is in this area, that the decisions of the courts have operated to frustrate what we considered to be the congressional objectives and subject to the employees to a grossly unfair burden with respect to their grievances and contract claims.

As I pointed out earlier in my statement, the act provides that awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award but it is also provided that in a statutory enforcement suit the findings and order of the Board are only prima facie evidence of the facts therein stated.

In case where the employees' claims are denied by the Board, the Supreme Court has construed these provisions to mean that the employee is bound by the Board's award, to the same extent as he would be by an adverse arbitration award, and may not obtain judicial review of any kind on the merits of his claim. (*Union Pacific R. Co.* v. *Price*, 360 U.S. 601.) According to the current body of judicial decisions, however, quite the opposite situation prevails where the employee has received a favorable award from the Board. In such instances the carrier may refuse to comply with the award, forcing the employee to institute an enforcement suit under the statute. In such suits, the lower Federal courts have consistently ruled that in spite of the statutory language according "final and binding" effect to awards, the whole dispute is to be heard de novo, thus affording the carrier the right to a complete relitigation of the claim on its merits.

To date the majority of the Supreme Court has not seen fit to pass directly on the question of the scope of review available to carriers in

statutory actions to enforce awards of the Board in favor of employees. In spite of its recent line of decisions developing a Federal policy in favor of arbitration of labor disputes; its repeated description, in several recent Railway Labor Act decisions, of the Adjustment Board procedure as constituting "compulsory arbitration"; its comments about the desirability of having these disputes decided by a board of experts in their field; and its comments that nonmoney awards "are made 'final and binding' by section 3 First (m), (*Locomotive Engineers* v. *Louisville & N. R.R. Co.*, *supra*), the Supreme Court has repeatedly refused to review cases in which carriers were accorded complete review on the merits of awards favorable to employees either monetary or nonmonetary. (*Railroad Trainmen* v. *Louisville & Nashville R.R.*, 334 F. (2d) 79, cert. den. 12 L. Ed (2d) 345, rehearing den. 13 L. Ed. (2d) 579.)

Thus, the situation with which railroad employees are presently faced as a result of this developing judicial precedent is as follows:

(1) They are foreclosed from resort to strikes or economic pressure to enforce their grievances or contract claims;

(2) They may not resort initially to the courts to enforce their bargaining agreements, but are limited to the submission of their claims to the Board, as an exclusive remedy;

(3) An adverse award by the Board is final and binding upon the employees, and they are denied any opportunity for a review of the award on its merits;

(4) A favorable award of the Board is not self-enforcing, and if a carrier chooses to refuse to comply with it, the employees' only remedy is to institute a suit in the U.S. district court to enforce the award;

(5) In such court action the carrier is afforded a complete review of the merits of the award, and the whole dispute is tried de novo, as a regular court action, on both the facts of the case and the interpretation of the bargaining agreement, and usually without any limitation on the evidence placed before the court, regardless of whether it had been considered in the proceedings before the Board.

In the light of the judicial interpretation which has been accorded the present statutory provisions with respect to the force and effect of awards of the National Railroad Adjustment Board, the expeditious and fair settlement of grievances and contract claims of employees in the railroad industry is being completely frustrated. The unlimited opportunity afforded carriers to completely relitigate disputes previously submitted to and decided by the Board not only prolongs their ultimate resolution, but defeats the objective of uniform interpretation of labor agreements in the railroad industry by an administrative tribunal having expert knowledge in the field. And the utter inequity of a system of adjudication denying employees any opportunity for review of an adverse decision at the Board level, but affording carriers a completely new trial on all awards favoring employees, is glaringly apparent.

A de novo judicial review of awards of the Board certainly operates to defeat the clear congressional objectives of expeditious settlement of minor disputes and grievances through a statutory system of compulsory arbitration; uniform and consistent interpretation of agreements on the property of a single carrier, or, in the case of multicarrier national agreements, throughout the industry; and the benefits of the

Board's expertise gained through practical knowledge of the railroad industry and its customs and usages.

These so-called minor disputes over the proper interpretation and application of agreements are frequently a major source of friction between management and labor, and involve substantial issues with respect to rights and benefits of large groups of employees. For employees to have to wait for years, as is often the case, before receiving a Board decision, and then face the prospect of having a favorable award nullified in an expensive and time-consuming de novo judicial proceeding, is a source of widespread irritation and frustration.

Under the present statutory procedures for handling these disputes, as interpreted by the courts, the Adjustment Board has become an impediment, rather than a help, to the peaceful settlement of these disputes. The concept of a judicial trial de novo is completely opposite to the objective of fair and expeditious disposition of labor disputes. As one State court has observed, if a judicial trial de novo must be given, "the twilight of administrative law is at hand, for the proceedings before the administrative body will be but a perfunctory skirmish, the principal contribution of which will be delay. (*General Acc. Fire & Life Assurance Corp.* v. *Industrial Commission*, 223 Wis. 635, 646.)

Faced with these conditions the organizations for whom I speak feel compelled to call upon the Congress for relief. As between the present procedure and that which preceded it, the employees would be better served by the elimination of the Adjustment Board and a return to the earlier methods of disposing of these disputes. Perhaps the effectiveness of the Board could be restored if the Congress makes clear, what we believe was originally intended in the 1934 amendments, that the Board procedure is not exclusive and is not intended to prohibit the use of economic strength to settle such disputes or to facilitate the enforcement of the Board's awards.

It is probably debatable whether either of these alternatives may be the most desirable ones, at least from the standpoint of the public interest and the purpose of the Railway Labor Act to prevent interruption to commerce.

We submit that absent these alternatives there is an urgent need for remedial legislation eliminating the current disparity of treatment of employees and employers in the railroad industry, and according all awards of the Board final and binding effect on the merits of the disputes submitted to it.

H.R. 704 is intended to achieve this objective. It would amend section 3 First (m) of the Railway Labor Act by striking from the second sentence thereof the words "except insofar as they shall contain a money award." That sentence as amended would then read as follows:

> 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.

The effect of this amendment would be to make money awards as well as nonmoney awards final and binding upon the parties. While this change in the act would remove part of the problem in that it would give the same degree of finality to money awards as to nonmoney awards, it does not, in our opinion, remove the objection to the present procedure which requires a trial de novo by the courts in an enforcement action involving both types of awards.

The courts have held that:

> The enforcement provision, subsection (p) makes no distinction between money awards and nonmoney awards. It refers generally to "an order" of the Board with which the carrier refuses to comply. If any order of the Board is to be enforced in a district court, the procedure set forth in subsection (p) must be followed. (*Brotherhood of Railroad Trainmen* v. *Louisville & N.R. Co.*, 334 F. 2d 79 (1964).)

Therefore, in addition to the proposed change in the language of subparagraph (m), we believe that additional changes in the language of section 3 First (p) would be required to achieve the objective of according finality to the Board's determinations, and avoiding protracted litigation of these disputes.

As I understand the decisions of most of the lower Federal courts, in the cases that have been brought to enforce the Board's awards, the language in subparagraph (p) to the effect that "the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated" has been interpreted as giving the Board's decisions only presumptive weight, or at most the effect of expert testimony, which the carriers are completely free to rebut by any testimony or other evidence they care to present bearing on the merits of the dispute.

Accordingly, we are suggesting that subparagraph (p) also be amended in such manner as to give to the awards and orders of the Board that degree of finality customarily accorded awards of arbitration boards. Such amendment, as we view it, should eliminate the concept that in an enforcement suit the courts should completely review what the Board has done on the merits and, in effect relitigate the whole dispute. Instead, we believe that, except for jurisdictional or procedural defects, the Board's determination on the facts and merits of the dispute, and the rights and legal obligations of the parties, should be conclusive on the courts called upon to enforce its awards and orders.

In concluding this statement I wish to say very frankly that to the employees the existing situation has become intolerable. The labor organizations for whom I am speaking spend a great deal of time and effort and thousands and thousands of dollars handling, preparing, submitting, and arguing cases before the Adjustment Board. We also bear the expense of the labor members on the Adjustment Board itself, as well as on supplemental boards and special boards. The Federal Government spends a substantinal sum each year to maintain and operate these various boards.

Again, Mr. Chairman, I wish to reiterate what I said initially, we feel the amendments offered by Congressman Williams will meet the suggested changes I am referring to here in my statement.

I am sure the carriers also spend a considerable amount of money in this area, but, through the chain of circumstances and conditions which I have outlined, they are able to use Adjustment Board procedures and the interpretations placed upon the language of the Railway Labor Act by the courts as a device to delay and frustrate one of the basic objectives which prompted Congress to enact the law in the first place: "to provide for the prompt and orderly settlement of all disputes" growing out of grievances or the interpretation or application of rules agreements.

If the employees submit a claim to the Adjustment Board and it is denied, they have lost the claim and that is it. There is no appeal—no recourse is open to them. But if the Board sustains their claim, they still cannot be sure whether they have won or lost. If the carrier involved chooses not to apply the award, the employees have the dubious choice of either letting the claim die by default or of going through an expensive, time-consuming court procedure in trying to enforce the award.

If the court reverses a sustaining award of the Board, as the courts are doing more and more frequently, the employees have indeed spent a great deal of time, money, and effort to get absolutely nowhere.

It is indeed an ironic situation that the employees are free to use their economic strength to obtain a rule they have requested, but once that rule is agreed to and placed in an agreement book, they cannot strike to enforce its application, regardless of how far afield individual carriers may go in applying the rule or how strongly the Adjustment Board may rule in favor of the employees, if a carrier chooses not to apply the rule properly or to accept the Board's award sustaining the employees' claim.

We certainly do not believe that the Members of Congress who established the National Railroad Adjustment Board through the amended Railway Labor Act some 30 years ago, or the representatives of the employees and the carriers who were involved in the passage of this legislation, ever intended to create the chaotic and even ridiculous situation that faces us today.

Through the years the carriers have established a highly developed and centralized bureau, the primary purpose of which is to thwart and frustrate in every way possible the basic purposes of this portion of the act. In submitting cases to the Adjustment Board, the employees are not dealing with individual carrier representatives but with a technical and legalistic group whose sole purpose is to ferret out means of defeating claims submitted to the Board.

I cannot overemphasize the opposition of the employees to a continuation of the present highly unsatisfactory method of disposing of unsettled disputes arising under rules agreements.

Mr. Al H. Chesser of the Brotherhood of Railroad Trainmen will also appear before you in support of both H.R. 701 and H.R. 704 on behalf of his own organization and of the Railway Labor Executives' Association, and I wish to assure the committee that I subscribe to what he will have to say with respect to both bills.

I appreciate this opportunity to appear before you and thank you for your attention to my remarks.

Mr. STAGGERS. Thank you, Mr. Crotty.

Mr. Williams, do you have any questions?

Mr. WILLIAMS. Mr. Chairman, I would like to express my appreciation to Mr. Crotty for a very fine and comprehensive statement.

Did I understand you correctly in saying that where a monetary award has been made that the carrier can refuse to pay that award and take the case to court where a trial de novo is held?

Mr. CROTTY. This is precisely the situation.

Mr. WILLIAMS. The carrier can force the employee to go to court to enforce the award?

Mr. CROTTY. That is the situation.

Mr. WILLIAMS. On the other hand, if the ruling is against the employee in a claim for monetary awards, the employee does not have the right to pursue his case further in court, is that correct?

Mr. CROTTY. Yes, sir; that is correct.

Mr. WILLIAMS. I think that in itself shows the one-sideness of the law in that respect. I think it cannot be considered equal treatment under the law, to say the least.

Mr. CROTTY. All we are asking for is an even break in these circumstances, to put it in railroad men's language.

Mr. WILLIAMS. That is all, Mr. Chairman.

Mr. STAGGERS. Mr. Springer?

Mr. SPRINGER. I have been interested in this for a number of years. In a sentence or two, where is the fundamental breakdown?

Mr. CROTTY. I think perhaps—we are speaking of adjustment work procedures in general?

Mr. SPRINGER. Yes, sir.

Mr. CROTTY. I think that initially the Board was intended to function more as a tribunal that was not staffed by lawyers or technicians. It was supposed to be a group of practical railroad men using practical knowledge to resolve disputes expeditiously.

We think, of course, as labor representatives, that we have been forced into long, protracted procedures before the Board by carrier tactics. I presume the carrier representatives might say the contrary is true. I think the ultimate results, at any event, are apparent. I think we have gotten far from what Congress intended when they set the legislation up.

It didn't mean every little bonfire that started would be submitted to the Adjustment Board. It was the intent of Congress, I am sure, that the Adjustment Board would be staffed by practical railroad men who would hear a dispute and establish a precedent that would be followed in subsequent disputes of a like nature. That has not been the case.

Mr. SPRINGER. Let me ask you: At the present time there are no neutral arbitrators?

Mr. CROTTY. Yes; here are neutral referees assigned in the vast majority of cases to break deadlocks. I would say in 98 percent of all cases submitted to the Adjustment Board it's necessary to assign referees through the National Mediation Board to break deadlocks.

Mr. SPRINGER. Has the breakdown been the fact that there are appeals? Has the neutral arbitrator been able to do anything with this situation?

Mr. CROTTY. The neutral arbitrator does break the deadlock. This prolongs the proceeding considerably—the fact a neutral arbitrator has to be used. It prolongs it, but ultimately an award is made, but this is our problem that we are addressing here in 704.

Even after the award is made, it is not applied in many instances when it is in favor of the employee, which forces us into court and again having the whole case relitigated. This is time consuming, expensive, and very detrimental to morale.

Mr. SPRINGER. Do you think that 701, 704, and 706 are the answers?

Mr. CROTTY. 701 and 704 will make very substantial contributions toward correcting the situation. I think it will put us back where Congress intended us to be.

Mr. SPRINGER. What are the definite improvements of those two over the present situation?

Mr. CROTTY. Well first—I will speak of 701, that number comes first—701 will permit the establishment of special boards of adjustment on individual railroad properties, through agreement between the parties, which will result in a disposition of the disputes between a particular organization and that particular carrier.

It has been our experience that you can handle six or seven disputes through a special board arrangement on an individual property as expeditiously and with less cost than you can handle one dispute before the National Railroad Adjustment Board. This is because the proceedings are not as technical, not as formal, and the parties are intimately acquainted with the problem. Thus the establishment of these special boards would substantially expedite the settlements of disputes and keep cases from going to the National Adjustment Board.

Second, it would make its contribution because the awards before the Board would be final and binding on both parties and not necessitate the submission of unapplied awards to court and a complete trial de novo and, generally, a reversal of the findings of the practical people that decided the dispute.

Mr. SPRINGER. You mean you would cut this off in the first proceeding?

Mr. CROTTY. Yes; we believe that should be done. That is what happens with respect to cases that are denied.

Mr. SPRINGER. Is this only with respect to money awards or all awards?

Mr. CROTTY. All awards.

Mr. SPRINGER. Thank you, Mr. Chairman.

Mr. STAGGERS. Mr. Jarman?

Mr. JARMAN. No questions, Mr. Chairman.

Mr. STAGGERS. Mr. Crotty, we appreciate your coming and giving us the benefit of your views. It has certainly enlightened me. We will be anxious to hear the opposing facts or opposite side of this argument. These views astound me, that they would be so one sided as they appear on the face of this.

It appears, according to your testimony, there are many of these disputes now in before the Adjustment Board that are not resolved and there is a backlog that will take many years to get out.

Mr. CROTTY. Let me refer to cases that involve members of my organization. If the Adjustment Board did not receive an additional dispute, an additional claim was not filed beginning today, the Board would still have enough work to take 5 years to clean up what work they have pending at the present time.

Mr. STAGGERS. I understand the First Division is probably as bad or worse?

Mr. CROTTY. It is worse. There are a greater number of cases pending there.

Mr. STAGGERS. That does not coincide with our justice in this country, that a person shall know sooner or later what possibly can be done.

Mr. CROTTY. It generally is later.

Mr. STAGGERS. I would think so if a person has to wait 10 years before getting his final award it wouldn't be any good then.

Anyhow it seems the Board is so constituted it acts as a delay in getting something done about these things. Funneling through them makes it years before you get a decision. Is that right? Are any of these awards made immediately, and something done about them, any of them?

Mr. CROTTY. The Fourth Division of the Board handles the least number of disputes. The delay with that Board in handling disputes is not too great.

Mr. STAGGERS. I am talking of the First Division. Do any of these disputes hope to get a decision in 6 months?

Mr. CROTTY. No.

Mr. STAGGERS. A year?

Mr. CROTTY. Perhaps in a claim of a discipline case, if it is moved to a special point in the docket, it could possibly get a quicker settlement.

Mr. STAGGERS. What about a money award?

Mr. CROTTY. No.

Mr. STAGGERS. Well, we want to listen with an open mind here, but if this is the case, it is not an expeditious way of handling these cases.

Mr. CROTTY. I think it takes a combination of things to handle these things; expedited procedure at the Board, less technicians working there, and I would hope more awards would be more binding on the parties.

Mr. STAGGERS. I was interested in another statement in reply to Mr. Springer—98 percent are referred to a referee. Ninety-eight percent of the cases?

Mr. CROTTY. I am sure that my percentage is fairly accurate, I am not over one or two points out of the way.

Mr. STAGGERS. You are sure it's more than 75 percent?

Mr. CROTTY. I would be sure its over 95 percent.

Mr. STAGGERS. We might as well have a referee to start with on these boards, this is just an avenue of delay.

Mr. CROTTY. For all practical purposes that is what it amounts to.

Mr. STAGGERS. Thank you for coming. That will be all.

Our next witness is Mr. Al Chesser.

Will you take the stand and give us your name and association and anyone associated that is appearing with you?

STATEMENT OF AL H. CHESSER, NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF RAILROAD TRAINMEN; ACCOMPANIED BY GENE R. JOHNSON, EXECUTIVE ASSISTANT TO THE BROTHERHOOD OF RAILROAD TRAINMEN'S REPRESENTATIVE TO THE NATIONAL RAILROAD ADJUSTMENT BOARD

Mr. CHESSER. Mr. Chairman, I have with me today Mr. Gene R. Johnson, who is the executive assistant to our representative on the National Railroad Adjustment Board, Division 1, in Chicago.

Mr. Johnson has served in this capacity for over 12 years and has a vast knowledge of the subjects covered in H.R. 701 and H.R. 704.

With this explanation I would appreciate the opportunity of presenting our testimony and if it pleases the committee, I would appreciate Mr. Johnson being able to answer any direct questions in

relation to the Board on account of his experience and as a present member there operating.

Mr. STAGGERS. He is a member of the Board now?

Mr. CHESSER. Yes; he is an executive assistant of our member on the Board.

Mr. Chairman and members of the subcommittee, my name is Al H. Chesser. I am the national legislative representative of the Brotherhood of Railroad Trainmen, which is one of the organizations associated with the Railway Labor Executives' Association. I appear here today to testify on behalf of our organization and the RLEA in support of H.R. 701 and H.R. 704 by Congressman John Bell Williams. My testimony deals in large part with the problems of the First Division, which are by far the most acute at the National Railroad Adjustment Board.

These two bills propose revisions of the Railway Labor Act which are vitally necessary—the one to correct inequity which has existed since passage of the act in 1934—and the other to (1) facilitate reduction in the backlog now existing at the First Division NRAB; and (2) help prevent accumulation of another such backlog upon reduction of the present one.

Exhibits are being submitted with this statement which contain evidence supporting what I say.

H.R. 701 is a bill proposing to amend the Railway Labor Act in order to provide for establishment of special adjustment boards to resolve disputes otherwise referable to the National Railroad Adjustment Board. Passage of the bill will accomplish more than this. It will permit us to withdraw disputes which have been laying in the First Division's files for a number of years and submit them to special adjustment boards on the properties, thereby reducing the backlog at once. Thereafter, under the bill, where a number of cases are commencing to accumulate on a given railroad, we will be able to set up a special board to decide them instead of overloading the First Division and building up another backlog.

I hope to convince you gentlemen of the vital need for this legislation because of the long existing unsatisfactory conditions on the First Division of the NRAB and the lack of adequate provision for corrective measures in the act as it now stands. First, we should see whether there is, as we contend, urgent need for such an amendment to the act.

In view of the fact that the bill expresses its purpose as being to provide for establishment of special adjustment boards to resolve disputes otherwise referable to the National Railroad Adjustment Board, you are entitled to proof that there are good reasons for our having the right conveyed by the bill. This, in turn, requires a showing that the NRAB is not adequate to handle the job unassisted and that its inadequacies are of so serious a nature that legislative relief must be given.

Evidence contained in our exhibits describes conditions on the First Division which existed from the time it started to function in the latter part of 1934 and follows the story down to the present time. The situation today can be established as a matter of fact by simply stating the performance of the Division with reference to its productivity and the relation of that factor with the size of the backlog of pending cases.

The productivity of the Division is established by the number of cases disposed of each year. Since the Division did not commence work until late in 1934, only 33 awards were rendered that year and we will not count it. Another period of partial activity occurred between September 1945 and July 1946, when the Division was in a dispute because of disagreement between the carrier and labor members on principles not pertinent to this hearing, and we will disregard the years 1945 and 1946 for that reason. During the first 10 years of full-time operation, which are from 1935 through 1944, both figures inclusive, the Division decided a total of 10,090 cases, including 13 which were not assigned numbers. This makes an average of 1,009 awards per year for 10 years.

The Division has had 18 years of full-time operation since it resumed functioning in July 1946, and this period spans the years 1947 through 1964, both inclusive. During those 18 years, the Division has rendered a total of 9,416 awards, which is 674 fewer than was rendered for the preceding 10-year period. The average for the 18 years was slightly more than 523 per year.

Before proceeding, it should be further explained that two supplemental boards were established to function in conjunction with the First Division during the period from October 1949 through March 1953. One of them handled conductors' and trainmen's cases, the other, engineers' and firemen's cases. This means that during this latter period (October 1949 through March 1953) there were three boards functioning at the First Division on a full-time basis. The full years of operation for these three boards were 1950, 1951, and 1952. The total awards rendered during those 3 years by all three boards was 2,775, which gives an annual average of 925. This is 84 awards less per year than the original Board decided for a 10-year period.

The railroads changed out their entire representation on the First Division in August and September 1946. None of the carrier members who worked with the labor members in averaging over a thousand awards a year for the first full 10-year period were on the job when, starting in 1947, the new membership of the Division decided an average of 523 cases per year. The organizations made two changes at about this time. The firemen appointed a new member May 1, 1946, and the conductors changed members October 1, 1946. If the changes were intended to improve conditions, they failed to accomplish their objectives.

This evidence shows a drastic reduction in productivity for the 18 years ending December 31, 1964, but the statistics for the last 6 years—1959 through 1964—are more shocking. The total annual output of the Division for these years was: 1959, 366 awards; 1960, 366 awards; 1961, 322 awards; 1962, 163 awards; 1963, 159 awards; and 1964, 128 awards.

The 6-year average of less than 251 per year is bad enough, but of even more significance is the steady decrease from 366 decisions in 1959 to the incredible figure of 128 for the entire year of 1964. The picture continues to get worse. As of February 28, 1965, for the first 2 full months of 1965, the Division has rendered 20 awards and if that is projected to the end of the year, we may expect even fewer awards than were turned out in 1964.

These are facts; they show first, a drop from a 10-year average of 1,009 awards per year to an 18-year average of 523 per year, but as of this time, based upon performance for the last 6 years, a steady decrease from 366 to 128 per year and indications 1965 will see even less than that.

Naturally, this performance has steadily built up a backlog of undecided cases. Records show the cases on hand and undecided increased from 1,095 to 4,836 between 1935 and 1941. At the close of 1942, the backlog was 6,092. It was reduced to 1,905 by the end of 1947.

It commenced to rise the very next year, totaling 2,191 at the end of 1948, and cresting at 3,169 in 1955. Establishment of special boards of adjustment, withdrawals for settlement on the property, and so on, reduced it to 2,430 by the close of 1957, it again started to build up so that as of March 1, 1965, the backlog of undecided cases at the First Division totaled 4,089.

The significance of these figures to the organizations whose memberships are waiting for decisions on those 4,089 cases is, when we know the Division has slowed down to an annual output of 128 awards and gives every indication of doing less and less, it is simple arithmetic to determine that, at this rate of progress, the Division will require 32 years or more, just to decide those 4,089 pending cases. This does not allow for those thousands of additional disputes to be filed during the 32 years.

The slowdown by the Division, from an annual average of 1,009 awards per year to 128, was bound to mean longer and longer delays from the time a case was docketed there until the decision was rendered. Exhibit 12 accompanying this statement, starting at page 54 of the exhibits, treats this phase of the situation in some detail. Although what is said there described conditions as of July 31, 1963, the sorry performance record of the Division from then on means it is worse now.

I do not want to unduly prolong my statement but, to complete the point I am making I will summarize briefly the ages of decided cases as reported at page 55 from our exhibits, which is taken from exhibit No. 12, the report of July 31, 1963, to Congressman John Bell Williams:

The Division had rendered 94 awards from January 1 to July 31, 1963, and the delay, from date of docketing to date of decision, was: unexpedited cases—total of 70—averaged 6 years and 7 months; 24 expedited cases (reinstatement of men involved), averaged 11 months. The fastest handling of unexpedited cases was 4 years and 10 months, and the longest delay, 8 years and 11 months.

The average age of cases now standing first out for decision ranges from 7 to 10 years and this in turn means that the claimants will have received a decision on their case after a delay of from 8 to 11 years. We believe the employees are certainly entitled to get a decision a lot sooner than that.

Mr. WILLIAMS. May I ask a question at this point?

Where there is a monetary award made in favor of the employee after 8 years, is he entitled to collect interest?

Mr. CHESSER. No; none. There is no provision in the Railway Labor Act to require any interest to be paid.

Mr. WILLIAMS. Thank you.

Mr. CHESSER. The performance of the Division, briefly summarized, from 1935 through 1964, shows a dropoff from a 10-year annual average of 1,009 awards to an 18-year average of 523, with a further analysis of the last 6 years showing the Division grinding down to an incredible low of 128 awards in the whole of 1964. The original Board decided that many disputes in a month and a half.

These facts and figures prove we must have the right to withhold cases from the Division until the backlog is disposed of and disputes are being handled with fair measure of promptitude. With the passage of H.R. 701 we would have the right to request and obtain special boards of adjustment on the various properties and could do this to prevent adding to the backlog as well as to withdraw cases for the purpose of reducing the backlog.

The next thing to be considered is whether the act, as it now stands, is deficient or imperfect, making the H.R. 701 amendment necessary. Admittedly, the act contains provisions which contemplate remedial measures along these same lines and it is sometimes urged this is a valid reason for not passing H.R. 701.

The parts of the act to which I refer are section 3, second, now permits the parties to set up special boards of adjustment. It reads:

> Second. 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 Act, 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.

A number of special boards have been established under this part of the act, but certain carriers refuse to do so. Section 3, second, being merely permissive, we are deprived of the benefits of special boards in all cases where the individual railroad does not want one. H.R. 701 would overcome this deficiency.

Section 3, first (k), provides for paneling of members of the regular Division and if full advantage were taken of this section, some positive relief, undoubtedly, would result. Our exhibits Nos. 1, 3, and 5 show the railroad representatives and the members on the Division have steadfastly refused to give this a trial.

Section 3, first (w), provides (again in a permissive way) for establishment of regional boards. In 1949 this was construed as providing for the creation of supplemental boards to function shoulder to shoulder with the First Division in taking over and deciding cases which had been docketed at the regular Division. We have seen that although two such supplemental boards did operate from October 1949 through March 31, 1953, the average annual productivity of the Division was not increased to match the output of the original Division nor did this prevent a steady increase in the backlog.

A supplemental board was set up effective March 15, 1965, for the purpose of handling firemen's cases only and there is no doubt that this will increase the output of the Division but, based upon records of the prior supplemental boards, there is no basis for belief the problem is solved. If the new supplemental board follows the established pattern which has strangled the regular Division for many years, it cannot be expected to do much better.

Down to this point, I have considered the question from the standpoint of whether H.R. 701 is needed at this time, with particular referecne to the secondary question of whether existing provisions of the act are not adequate. We have seen very clearly that it is urgently needed. We have also determined, as a matter of fact, that the other sections of the existing law have been there, available for use, but during the 30 years the Division has functioned, they have not been used in some instances and to the extent they have been used, have been inadequate to either expedite the handling of cases or keep the backlog down to a reasonable figure.

Another aspect of the picture now requires our attention. It has been urged that there is nothing here for Congress to concern itself with; that the railroad managements and the affected organizations can sit down across the table and, under the act as it now stands, solve the problems without governmental intervention. I am the first to agree that this could have been done at any time down through the years. However, it is a matter of undisputed fact that the parties have undertaken to reach such a solution, commencing back in the forepart of 1937 and continuing through intermittent conferences and correspondence right to the present time, without achieving results of any lasting nature.

The Congress should reject the thought that it should let H.R. 701 die and allow the parties to continue negotiations until they solve the problems because there is virtually no hope they will ever be able to do so. We have tried for nearly 30 years to reach an understanding with the top representatives of the Nation's carriers which would take care of the matter, and have been unable to do so. That is why I say to you today, if we are going to get relief, now is the time and H.R. 701 is the means.

I have researched our records containing the past history of our handling of this problem and, eliminating much valuable data for the sake of brevity, am laying before you the evidence of what we have done, starting early in 1937. This evidence is contained in the exhibits accompanying my statement. I am sure you will agree it would be repetitious for me to sit here and tell you about it in detail, although the gravity of the situation would seem to justify my doing so. Instead, I am giving you the evidence in the form of these exhibits with the knowledge you will give it every consideration.

I only want to say that the five organizations whose employees come within the jurisdiction of the First Division, NRAB, have engaged in frustrating, fruitless meetings with the top representatives of the railroads for the express purpose of solving the very problems which exist today in virtually the same form as they did within 3 years from the time the Division began to function. The handling has never accomplished anything. Particularly, take note of the fact that we took this up again with renew vigor in December of 1962 and intermittent meetings with the management men were taking place down into 1964.

In some ways I guess it could be said there is a little life in the negotiations even now. But, again, note that nothing has come of all of this. In fact, at the very time when our most recent efforts were being put forth, in the years 1962, 1963, and 1964, the conditions at the First Division reached the worst level in the history of the Board.

I suggest you look at page IV, our exhibits file, where I have summarized in brief form the nature of suggested remedies and corrective measures which have been advanced, as set out in fuller detail in the exhibits themselves. Some of these cure-alls have been urged time and again. I am confident when you have read these exhibits you will come to the conclusion that about every kind of idea has been toyed with and not just once but after all of this drawn out handling, nothing concrete has been accomplished.

You will, undoubtedly, be wondering if there are some basic causes for the terrible decline in productivity at the Division. There are, and these are described and discussed in detail in our exhibits. The main troublemakers are the refusal of the management, out on the properties and at the Division level, to accept awards as precedent in subsequent cases unless they tend to deny a given claim. This conduct has compelled our people to take disputes back to the Division even though they have been already decided and sometimes more than once. The submission of repeater cases—that is, having to get awards on the same issues time and time again—is another prime factor in building up the backlog.

Another basic cause for the slowdown and resultant backlog is the attitude of the management men with reference to section 3, first (l), covering assignment of referees to break deadlocks. They have taken the position that since the act provides for appointment of referees, they are entitled to have referees in every case if they so desire. Where the question is discussed in our exhibits, you will find the carrier members of the First Division force virtually every case to a referee unless the labor members will agree to a denial or dismissal of the claim.

We have submitted evidence that the trainmen's member on the First Division has functioned as such in denying or dismissing more than 900 cases without forcing them to a referee during the period July 1952 to July 1963, and in return has been able to get just 23 awards sustaining claims from the carrier members, without having to go to a referee. One carrier member, still on the Division, has never agreed to pay a claim without a referee since July 1952; another, who was retired September 1, 1964, had not agreed to pay a claim from July 1952 down to date of retirement. This means the other three carrier members between them averaged less than eight sustaining decisions without referee for the 12-year period.

When cases are forced to a referee this entails preparation of written briefs and oral arguments meaning an award which could have been rendered in minutes requires days or even weeks of time. Further details of this method of disposing of disputes can be brought out by our witness from the Division.

In conclusion on this part of my statement, I strongly urge you to support H.R. 701. The rank and file members of our organizations need this legislation if we are to ever get the First Division up to date so we can get decisions on our cases before our men retire on old-age pensions or die.

H.R. 704 is a bill proposing to amend the Railway Labor Act in order to make all awards of the National Railroad Adjustment Board final.

It should be passed in the first instance purely as a matter of simple justice, thereby correcting an inequity which has done the employees grave wrong since the earliest days.

Appended to our exhibit No. 12, see page 70 of the exhibit file, is a memorandum dated December 19, 1962, which tells the story of 13 awards rendered by the Division in June and July of 1936. The carrier refused to comply with the awards. Therefore, we could not enforce the awards except by filing 13 separate law suits under section 3, first (p) of the act. In that instance, sympathy on the part of certani Senators prompted senatorial action which persuaded the railroad to pay the money it owed the men.

We need more lasting congressional assistance. We now have a under under which there is no appeal to the courts if we receive an adverse decision but if we prevail at the Division and the decision requires the carrier to pay as much as 5 cents, it has section 3, first (m) and (p) to give it a second chance to escape its liability.

Where we have a claim sustained requiring the payment of money and the carrier refuses to comply, we have a choice of foregoing the fruits of the victory, or filing an enforcement suit under section 3, first (p). There would be no harm to us under the law if the carriers did not avail themselves of the oppportunity to get a second shot at beating the case. But they do. Our exhibit 5, page 12 of exhibits file, has reference to widespreead practice on the part of the railroads prior to 1942, to refuse to pay claims under sustaining awards.

Exhibit 7, page 23 of exhibits file, see appendix 1 to the exhibit, page 34, listing railroads which had refused to comply with 84 awards of the first division, as of May 9, 1944. Exhibit 18, page 104, lists awards which the railroads have refused to comply with. Note Award No. 19235, where no money was involved and still the carrier would not comply; Award No. 11929 required payment of only $160; Award 19953, $37; Award 19979, $288; Award 19980, $40, and Tward 20430—1 day's pay as hostler helper, about $14.60. In the latter case, the man waited 7 years for the award requiring the carrier to pay him what was due him under the contract and then it refused to coomply. Information furnished us is that the Brotherhood of Locomotive Engineers is detetrmined to file suit under 3, first (p) to correct this gross injustice.

Many of the other awards listed were cases where the carrier was found to have unjustly disciplined the claimant and then refused to pay him the time lost he had coming when he won his case before the Board. So, the employee waits patiently for the decision; when he thinks he has won and will be restored to serve with payment for lost earnings, he finds that instead, he will stay out in the street unless he or the organization is financially able to institute enforcement proceedings in the courts.

Formerly the organizations acted in unison to apply economic force against a railroad which was refusing compliance, but the U.S. Supreme Court held recently, in *Brotherhood of Locomotive Engineers* v. *the L. & N. Railroad*, 83 Supreme Court, page 1059, that we may not do this any more; the Courts take the view that enforcement provisions of the act—sections 3, first (m) and (p)—afford a means of disposing of such a controversy which the parties must use. The rail-

roads have been quick to take advantage of such holdings. As evidenced by our exhibits, they tend more and more to refuse compliance thus forcing us to forgo our favorable decision or resort to the courts and give them a second chance to defeat us.

The Brotherhood of Railroad Trainmen has been compelled to file nine such suits in the last few years and will probably have to do so in connection with several other sustaining awards rendered in 1963 and 1964. The financial drain from this source is severe. The economic status of the railroads as compared with the organizations, is well known. The court costs are a drop in the bucket to them but already some of the organizations find it financially impossible to avail themselves of the enforcement provisions of the act and have no choice but to suffer the aggravation of being deprivced of the benefits of their favorable decisions whenever the railroad does not wish to comply. The cost of this litigation is substantial since we have found we must take these cases all the way to the Supreme Court before we can collect.

Under the existing provisions of the act we have an obvious inequity. If the organization loses at the Board, it is done insofar as that particular case is concerned. If the carrier loses, it can have a second chance by refusing to comply.

Consider the alternative of amending the act to give both sides the right to appeal to the courts in any case where they were dissatisfied with the award of the Board. This remedy would shortly be unavailable to the organizations for financial reasons and it would soon be beneficial only to the railroads.

Secondly, this would almost immediately end the usefulness of the Board as the "supreme court" of labor disputes which the Congress intended when the act was passed in 1934. The statutory limitation of jurisdiction over disputes involving the application and interpretation of the collectively bargained agreements in the divisions of the NRAB would become meaningless except to the extent of primary jurisdiction. That is, the parties would be limited to the divisions in the first instance, but thereafter, would turn to the courts to the extent financially able. In a short time, the divisions would become the doorway to the courts but a doorway requiring plenty of money to operate and very soon it would be used only by the railroads.

The desirability of having railroad labor cases decided by a railroad labor tribunal has been emphasized by the courts. The well-known decision in *Slocum* v. *D.L. & W.*, volume 339 U.S. 239; 70 Supreme Court, 577, says on this point:

> * * * The Adjustment Board is well equipped to exercise its congressionally imposed functions. Its members understood railroad problems and speak the railroad jargon. Long and varied experience have added to the Board's initial qualifications. Precedents established by it, while not necessarily binding, provide opportunities for a desirable degree of uniformity in the interpretation of agreements throughout the Nation's railway system.

A dispute arose between the B. of R.T. and the SUNA on the D.L. & W. Railroad over rights to certain work and a suit was filed in the New York Court of Appeals which rendered an opinion dated January 24, 1952, holding in part:

> * * * In enacting the statute, Congress determined that, if decisions are to be made upon basic questions of railroad-employee relations, they must be made, if at all, by the designated agency "peculiarly competent" to decide them; that, if disputes arise as to the meaning, application or scope of agreements between railroads and unions involving labor relations, they must be read and

construed, in the light of usage, practice, and custom, by the designated body most familiar with them. * * *

In *Isgett* v. *Atlantic Coast Line Railroad Company*, South Carolina Supreme Court, volume 74, Southeast, second, page 220, it was held a trial court was without jurisdiction in a suit for restoration of seniority rights and time loss damages, the court saying:

> Sound congressional reason for the rule here applied, as stated in the opinions in the *Slocum* and *Southern Railway* cases, is the goal of uniformity in the interpretation of collective bargaining agreements between the carriers and their employees, which should result from exclusive primary jurisdiction of the Adjustment Board created by the Railway Labor Act, and the consequent avoidance of unnecessary causes of friction in labor relations. This is illustrated by the case at bar. If the court should undertake to now decide the controversy, it would not bind the Board, to which the next similar controversy might be taken. It would seem that the presently firmly established rule of exclusive primary jurisdiction of the Board in such cases should be beneficial, in the long run, to both carriers and employees, and to the public. * * *

There are many, many more decisions expressing these same thoughts.

The solution to this problem is enactment of H.R. 704 making all awards final and binding. This will carry out the intent of the Congress in the first instance—permitting railroad men to have railroad problems decided by a railroad tribunal composed of men with practical railroad background who know the language, the operating condition and problems, and who have adequate precedential authorities for their guidance.

The present Board has made more than 20,500 awards since commencing operation in the latter part of 1934; it was preceded by the four regional boards of the 1926 Railway Labor Act which handed down approximately 10,000 decisions; the regional boards, in turn, were preceded by the U.S. Railroad Labor Board and Railway Board of Adjustment No. 1, which, between them, decided 6,000 or more of these cases. Many of the rules and agreements in effect today were in effect before these successive tribunals—in fact, many of the early decisions on disputes involving these rules were made by organization and management representatives who participated in negotiating the rules when they were first promulgated, or were otherwise intimately acquainted with their background and source.

The members of the divisions on both sides, come from the railroads themselves, after having spent years in negotiations, interpretations, and applications of the rules which endows them with a background which is absolutely essential in the just and fair disposition of disputes where the decision rendered generally is of significance on an industry-wide basis.

The reason for this is the main body of rules in the agreements of the major carriers are the same; they had their origin, say, in passage of the Adamson Act in 1916; they were negotiated by a national team from both sides when the hours-of-service law became effective in 1908; they came in a body from the director general of the railroads when the Nation's carriers were under Government control during the First World War; they were placed in the contracts of the carrier as the result of negotiation on a national or a regional scale between the officers of the organizations and the carriers.

The vast majority of the cases the Adjustment Board is called upon to decide require consideration of the antecedents of the rule or rules,

knowledge of prior decisions of similar disputes, because the decision rendered may well affect the conduct of the parties to contracts on a large number of other railroads with the same rules or agreements. An average person without the practical railroad background would not understand many of our rules and most certainly would be totally devoid of knowledge of how they have been interpreted and applied down through 50 or more years some of them have been in existence.

It has been suggested that some awards sustaining claims contain errors in their holdings; that those requiring the payment of money should not be made final and binding for this reason; that the railroads should be privileged to disregard them unless a court, after retrial under the enforcement provisions of the act, compels them to do so. First, this does not give equal treatment or consideration to the employees and is inequitable for reasons already given; second, if the carriers refuse to comply with decisions against them indiscriminately, we must meet the burden of winning twice and it will not be long until we cannot stand the cost.

In the final analysis, the basis for thinking the carriers need a right to appeal while the employees do not, is unsound. There are as many errors made in the process of denying a claim as there are in reaching a sustaining decision. If the carriers were foreclosed from protecting themselves in any way against such errors, they would have a talking point, but the truth is they are not. It has been the practice in the past, where the Board has decided a case with findings which are in error for one reason or another, for the parties to negotiate an understanding governing their future handling of the subject matter under dispute so as to correct the errors of such an award.

Awards of this kind are those made by referees—neutrals appointed by the National Mediation Board after the Board has deadlocked on the dispute—who are college professors specializing in labor relations, lawyers, or judges. Another solution is for the carrier to follow the course of action available to the organizations who have a claim denied in what is believed to be a miscarriage, or gross error: since, under the act, the awards of the Board do not have positive application to future cases, another claim involving the same dispute can be submitted to the Board with such evidence as is available, in a plea that the division recognize the error of the former award, overrule it, and render a correct decision the next time. The divisions have rendered many awards which specifically, or in substance, disregard and overrule a prior decision proven to be erroneous for this or that reason.

We believe that decisions in the first instance or overruling decisions should be made by the tribunal vested with exclusive, primary jurisdiction of these matters by the Congress in passage of the Railway Labor Act. Otherwise, we will find conflict between decisions of the Board and those of the court which will only add to the unrest and dissatisfaction of both sides. It is far better to have and maintain the body of controlling authority found in the majority of the Board's decisions on the various classes of cases than to continue to send more coses to the courts with resultant decisions at variance with what the Board has held, in the main, for many years.

Naturally, in every line of decisions there will be a minority in conflict with the rest but these are generally known to be inconsistent or peculiar to the particular set of facts and parties involved; we in the

railroad industry know the good from the bad. But when the courts get into the act, it has been our experience they seem to make it a point to disagree with what we have done in the industry for a half century or more, and usually a court decision evolving from enforcement proceedings just makes matters worse.

Instead of following precedential authorities in our field, the courts inject something of their own, including some of their own inconsistency and conflicting holdings. Even though the Supreme Court and other high courts have repeatedly held that the Board has exclusive jurisdiction to decide railroad cases and where the courts must usurp its function in the course of disposing of an enforcement suit or other cause of action referable to the courts under the law, any decision of the court which interprets a provision in a collective bargaining agreement is not binding on the Board nor authoritative precedent as to it, nevertheless, one side or the other will use those court decisions if to its advantage, regardless of their being directly contrary to a long line of Board awards. Obviously, the industry should stay with its own long-established precedents.

For these reasons the solution to the present problem—the undeniable inequity of permitting only one side to the argument a second chance if it loses on the first one—is to make all the awards of the Board final and binding and not subject to review on their merits by the courts. This revision of the act also implements the intention of the Congress to have railroad agreements interpreted and applied by railroad men; down through the years the Board, and its predecessor tribunals, have built up precedent in the form of 35,000 to 40,000 decisions involving interpretation and application of these more or less standard railroad agreements; passage of H.R. 704 will keep our problems where they belong and tend to maintain consistency and uniformity of application of similar or identical rules by force of decisions by railroad men. We ask that this bill be favorably reported and ultimately passed, thereby removing the present inequity in the act and righting what is clearly a wrong on the employees.

Mr. Chairman, I wish to express my thanks and appreciation to the members of this committee for the privilege of appearing before you to present the views of the brotherhood in support of H.R. 701 and H.R. 704.

Mr. STAGGERS. We appreciate your coming before the committee to give us the benefit of your views, and certainly you have stated them well from your point of view.

I now would like to go to the gentleman accompanying you.

He is the counsel for one of the members?

Mr. CHESSER. He is the executive assistant to our member on the First Division and he has acted in this capacity for over 12 years.

Mr. STAGGERS. He has been in where these cases are decided and has firsthand knowledge of these procedures?

Mr. CHESSER. He himself has handled these procedures.

Mr. STAGGERS. I believe according to your instruction if there are any questions as to the procedure of the Board you would like them directed to him.

Mr. CHESSER. Yes, sir, due to his experience.

Mr. STAGGERS. Of the nearly 4,100 cases in the First Division backlog, how many would you estimate are "repeater" cases which the mem-

bers could reasonably be expected to decide on the basis of prior similar decisions?

Mr. JOHNSON. Excluding discipline cases, the cases which involve interpretation and application of the contracts, about 85 to 90 percent have been decided by the Board in previous decisions.

Mr. STAGGERS. If they were to abide by those decisions or take them as precedents?

Mr. JOHNSON. They would be denied or sustained according to previous decisions.

Mr. STAGGERS. In the handling of cases by the First Division members what cases are decided without deadlocking them and getting a referee?.

Mr. JOHNSON. For the past 10, 12, or 15 years very little except to this extent. Where the carrier members feel that prior awards require a denial or dismissal of a pending case they will come and talk to us and call our attention to such prior awards and ask us to deny or dismiss the case at hand. But as to sustaining claims on the basis of prior awards we have had 23, well, as of today, possibly 30 without a referee in the past 12 years. In other words, then, the precedent is used to expedite the handling primarily to deny or dismiss. If we won't agree to deny or dismiss the case it must lie there until it comes up in its turn, which at the present time is 7, 8, or 10 years.

Mr. STAGGERS. You can see then why the use of the referee would hold up productivity.

Mr. JOHNSON. Yes.

Could I amplify that a little?

Mr. STAGGERS. Certainly.

Mr. JOHNSON. Going back to September 1961, we had a case come in from C. & O. Railroad involving the conductors' organizations. The claim did not require the payment of money in the event we upheld the position of the organization. In that case, it required the Division to put the man back to work but without pay for time lost, where the dispute was over his physical condition. The Division has rendered around 75 decisions involving the principles of this case, and they were without referee assistance, when the principles were clearly understood and agreed to by all members of the Board. That particular case, since there was no money in it the carriers agreed with the labor members and we set up findings which supplied the decision to set up a medical board consisting of three doctors to examine the man and if he was found fit restore him to work without pay.

Two months later I had a trainman's case from the same railroad and our claim would be substantially the same as the conductors. This case was practically a duplicate of the others as far as principles are concerned but in our case the man was entitled to be paid for time lost in the event he was found physically fit. That is if the carrier held him unjustly from work on the grounds of unfitness and later he was determined to be fit for duty, he was required to pay him for time lost. This case was only 2 months after the other. We were required to brief that and take it to a referee. The carrier handling that case informed me he was going to take a position we had no jurisdiction to take and decide such a case. I called his attention to the fact we had more than 75 prior awards disposing of these cases and had made one practically identical just 2 months previously. He

said nevertheless they were taking the position we had no authority to decide such issues or render such findings.

In preparing the case it was necessary for me to do the research, find the prior awards, brief them for the referee—he would have no knowledge of this if we didn't give them to him in the written brief. It required several weeks on my part to prepare a written brief, to give him everything we had in our favor. You see, Mr. Chairman, if we go to a referee in a case like this with so many authorities behind us, and we don't inform the referee of everything we have, if we lose it, we are to blame.

As Mr. Chesser pointed out, through the years we have built up this tremendous body of decision precedents. As we are forced today to collect these claims through referees, we must let them know of the decisions we have. That means the briefs have to be correspondingly longer. When you get in the board room the referee has more to cover; the oral argument may take a few hours to several days. The net result was we went to a referee with it and got a sustained award.

Those results can't be guaranteed, we can lose them, too.

Mr. STAGGERS. That was what Mr. Chesser had implied in his testimony.

What percentage of the pending cases would you say have been so clearly decided before, that submitting them to the Division is really a waste of time on the part of the parties as well as the Board?

Mr. JOHNSON. Isn't that the first question you asked me?

Mr. STAGGERS. No, it is not, I wanted to know the percentage that had been so clearly decided. You said in this case you had 75 antecedents on it.

Mr. JOHNSON. That we received which have been clearly decided, if we just follow our precedent?

Mr. STAGGERS. That is right.

Mr. JOHNSON. Excluding discipline cases, we consider those as nonprecedented cases except as the principles apply to conducting fair hearings. Excluding discipline cases, time claim cases, 85 to 90 percent have been decided by prior awards. In other words, putting it this way, then 10 to 15 percent of the cases which come in would involve a question of interpretation or application of the agreement which presents a question which has not been specifically passed on.

Mr. STAGGERS. That is what I wanted to know.

Mr. JOHNSON. Yes, sir.

Mr. STAGGERS. Assuming the rate of case presentation were to remain about what it is now, do you believe the First Division membership could be kept current if the backlog were to be disposed of and wiped out now?

Mr. JOHNSON. Yes, sir; I checked our records not long ago in preparing a statement for the brotherhood and established on an average 65 cases are submitted to the Division each month. That was computed over a few years. The Division could decide that many cases a month and it would keep current. If it decided more, it could get ahead. So when you think the prior Board averaged 1,009 cases a year, which comes out to about 85 a month, obviously if we could decide 65 or 70 we could stay current.

Mr. STAGGERS. Do you believe this amendment as proposed to the law as submitted by Mr. Williams, that is 701, do you believe it would

be directly beneficial to the First Division and keep the backlog down to a minimum if passed?

Mr. JOHNSON. Yes.

Mr. STAGGERS. Do you believe the amendment involved in H.R. 704 would prove beneficial to the First Division in its everyday operations and that it could have a direct effect on productivity and control of the backlog?

Mr. JOHNSON. Yes; because if there the railroad and organizations knew when the Division decided the case that was the end of it, that they were not going to the courts, they might be more persuaded to abide by the precedents we have now. The single factor now causing the backlog is the refusal to follow the previous cases.

Mr. STAGGERS. Do you think it is a fair statement to say the Division should always have a backlog of a certain number of cases?

Mr. JOHNSON. I have heard this point in that normal operation it is healthy for you to expect to have a backlog at all times. This means the men are going to have to wait some time to get their decisions. The rate today, the average of 65 a month, the Division should and could keep up with that and the men would be getting decisions probably on their cases in weeks or a matter of a month or two at most. That certainly would be more preferable than 8 to 10 years.

Mr. STAGGERS. Do you have an opinion as to what could be said to be the one most important thing which causes building up these continual backlogs and if so, does that also affect the productivity of the Board?

Mr. JOHNSON. Yes, sir.

Mr. STAGGERS. What is the one main issue that you might think is at stake?

Mr. JOHNSON. One big factor is refusal to follow prior awards to sustain claims as well as to deny. We have at present 1,500 trainmen cases in that backlog and if I went back to Chicago and agreed to deny everyone we would not have a trainman's case backlog. But every case where we have a right to sustaining award you have to brief that and take it to a referee. That is the one biggest factor, the refusal to follow the precedent award.

Mr. STAGGERS. I mentioned earlier about the "repeater" cases, I know if these were not brought in you would not have this backlog. Do some of the organizations keep bringing in the "repeater" cases?

Mr. JOHNSON. There are two shoes in that pair. One fits the railroads. I have records showing where the backlog figures from as far as 1952. This is the picture as it exists today. On a given railroad there were 500 cases and it was ascertained those 500 cases fell into 17 classes; that is, if the railroad agreed with the chairman to send just the 17 test cases to the Division and applied the decision to the other cases and held them in abeyance pending our decision, they could have decided the whole 500 by sending 17 to the Division. Instead the railroad refused to hold the other cases pending the outcome of the 17 and the Division had to decide 500 cases.

Mr. STAGGERS. You are saying in regard to these "repeater" decisions that if you abide by the decision, they would not be in court?

Mr. JOHNSON. Yes.

Mr. STAGGERS. I know that is one of the objections to this thing but when they fail to abide by one of these decisions it makes it necessary to bring in repeater cases?

Mr. JOHNSON. Yes.

Mr. STAGGERS. Mr. Friedel?

Mr. FRIEDEL. No questions.

Mr. STAGGERS. Mr. Jarman?

Mr. JARMAN. No questions.

Mr. STAGGERS. Mr. Pickle?

Mr. PICKLE. May I ask this question?

Mr. STAGGERS. Certainly.

Mr. PICKLE. Your H.R. 704 provides for the establishment of a special board of adjustment, one representing the carrier and the employees and a neutral person. Does this act contemplate the appointment of a special board in each dispute that is pending?

Mr. JOHNSON. What we would do, you would ask for a special board of adjustment on a railroad where you have a block of cases. Sometimes the parties accumulate anywhere from 25, maybe as high as several hundred, depending on the size of the railroad. In such cases we would possibly prefer to have these cases decided by a special board right on the property. No. 1, for economic reasons, No. 2, you are going to get your decisions in a matter of a month or two instead of maybe 10 years. If a dispute of some magnitude would arise, they would ask for a special board on the property to handle that particular case. Usually those cases are of such a nature you could not send them to the board anyway.

Mr. PICKLE. Why would not it be possible under 701 to have an indeterminate number of boards, is this your purpose? Is this how you intend to speed this up?

Mr. JOHNSON. I will see if I understand your question fully. How do you mean special boards, on one railroad or many railroads?

Mr. PICKLE. Well, all of them?

Mr. JOHNSON. The purpose of our organization, as I know and understand it, is to have authority under the act to request and obtain a special board on certain carriers where we now have cases and the carriers refuse to agree to such a board. As the act now stands, they don't have to. We can request, and they can refuse. We have had specific instances of cases where the railroad would not agree and we have certain time limitations in our contract. The case will die unless we send them to the First Division, which means 8 to 10 years of waiting for a decision.

We have right now a number of cases which were docketed in 1955 and they will not even come up for the next step toward a decision for at least a year. We have a substantial number of cases docketed in 1956, about 85, I think, laying up there in the backlog, and these won't be decided until after those docketed in 1955 and those in 1954, of which we still have some. They will lay behind those. We have almost 257 which were docketed in 1957, and they right now are almost 3 years away as the Board is functioning.

Mr. PICKLE. I can understand why it needs speeding up.

Mr. JOHNSON. We can't do this unless the law is changed. There is expense involved.

Mr. PICKLE. That is all.

Mr. STAGGERS. Mr. Williams?

Mr. WILLIAMS. I have no questions. I think the subject has been pretty well covered by Mr. Chesser's comprehensive statement.

Mr. STAGGERS. Mr. Chesser, do you wish your exhibits to be made a part of the record?

Mr. CHESSER. Yes, sir.

Mr. STAGGERS. Without objection, they will be included.

(The exhibits follow:)

EXHIBITS

SUPPORTING DATA USED IN CONNECTION WITH STATEMENT OF AL H. CHESSER, NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF RAILROAD TRAINMEN

LIST OF EXHIBITS ACCOMPANYING MR. CHESSER'S STATEMENT ON H.R. NOS. 701 AND 704

Exhibit No. 1. Minutes of July 26, 1937, meeting between representatives of the Nation's railroads and the operating brotherhoods subject to the jurisdiction of the First Division, NRAB, re backlog and other unfavorable conditions on the first division.

Exhibit No. 2. Letter of January 23, 1940, president, B. of R.T., to all grievance committees, etc., in United States, re first division.

Exhibit No. 3. Letter, October 10, 1941, president, B. of R.T., to other four presidents, causes for deplorable conditions and failure of efforts to secure cooperation from management representatives.

Exhibit No. 4. Letter, September 15, 1942, president, B. of R.T., to Director Joseph B. Eastman, Office of Defense Transportation, soliciting governmental assistance in achieving correction of conditions, first division, NRAB.

Exhibit No. 5. Letter, September 28, 1942, president, B. of R.T. to all grievance committees etc., in United States, relating efforts to correct conditions on first division and reasons for lack of results in handling with representatives of management.

Exhibit No. 6. Letter, December 26, 1942, Director Eastman, ODT, re request by President Franklin D. Roosevelt that he "look into" unsatisfactory conditions on first division, NRAB, and requesting meeting with the parties, January 5, 1943, "to review the situation and attempt to work out corrective measures."

Exhibit No. 7. Letter, May 18, 1944, presidents, B. of R.T. and B. of L.E. to Director J. M. Johnson, ODT, reciting the abortive handling in attempting to correct conditions on the first division, NRAB, down through the years and giving reasons for those conditions.

Exhibit No. 8. Letter, February 13, 1945, President Franklin D. Roosevelt to Mr. Edward J. Conors, U.P. RR., directing that he investigate and report on conditions, first division, NRAB.

Exhibit No. 9. Letter, February 16, 1948, presidents, five operating brotherhoods, first division, to all officers of those organizations, with instructions on handling cases in effort to improve situation on first division.

Exhibit No. 10. Letter, February 3, 1955, from National Mediation Board Chairman Francis A. O'Neill, Jr., to presidents of the five operating brotherhoods, suggesting methods of improving conditions on first division.

Exhibit No. 11. Letter, February 18, 1955, from five labor members, first division, to presidents of the brotherhoods, re suggestions by Mr. O'Neill, in exhibit No. 10.

Exhibit No. 12. Letter, July 31, 1963, reply of Brotherhood of Railroad Trainmen's member on the first division to inquiry from Congressman John Bell Williams re backlog and delay in handling cases, first division.

Exhibit No. 13. Letter, August 9, 1963, B. of R.T. member, first division, to Congressman John Bell Williams, in connection with carrier members' reply of August 6 to questions answered in exhibit No. 12.

Exhibit No. 14. Letter, May 6, 1964, President Lyndon B. Johnson to the Chairman of the National Mediation Board, in part, directing him to undertake action to improve conditions on first division, NRAB, as to reducing the backlog and expediting decisions.

Exhibit No. 15. Letter, July 28, 1964, Mr. J. E. Wolfe, chairman, railroads' National Railway Labor Conference, to president, B. of R.T., proposing method of reducing backlog and expediting case handling, first division, NRAB.

Exhibit No. 16. Letter, August 10, 1964, president, B. of R.T., to Mr. J. E. Wolfe, in reply to exhibit No. 15.

Exhibit No. 17. Letter, October 6, 1964, president, B. of R.T., to Chairman Gamser, National Mediation Board, reply to inquiry from Congressman John Bell Williams, dated September 21, 1964, re status of program "formulated by Mr. J. E. Wolfe, * * * designed to mitigate the backlog of work on the first division."

Exhibit No. 18. Awards sustaining claims, in whole, or in part, which the carriers have refused to comply with; also, on this point see appendix No. 1, to exhibit No. 7, reporting 84 unapplied first division awards to May 9, 1944. Those listed in exhibit No. 18 are unapplied awards of the first division from 1948, and of the second and third divisions, of which we have information. The total listed in exhibit No. 18 is 72; there have been many others but we do not have record of them.

REFERENCES TO EXHIBITS, SHOWING PATTERN OF HANDLING, 1937 TO PRESENT, WITHOUT ACCOMPLISHING IMPROVEMENT IN CONDITIONS, REDUCTION OF BACKLOG NOR THE EXPEDITING OF CASES AT THE FIRST DIVISION

First, consideration of methods of reduction in the backlog and how to prevent another from accumulating (assuming such reduction were to be brought about), shows the following remedies were suggested:

JOINT SUBMISSIONS

To be made by the parties, eliminating conflicting positions and otherwise expediting handling of the division: Exhibit 1, July 26, 1937; exhibit 5, September 28, 1942.

REFEREES, PERMANENTLY ASSIGNED

Referees to be appointed on a permanent basis to dispose of cases in given groups and recalled to handle similar groups: Exhibit 10, February 3, 1955, and reply thereto, exhibit 11, February 18, 1955.

REGIONAL BOARDS

To be established to take some of the load off the division: Exhibit 1, July 27, 1937, under section 3, first (w).

REMAND DISPUTES TO PARTIES

Remand cases to parties having more than a given number pending, for settlement on the property, or, retention of the cases on the calendar of the division while parties attempted again to dispose of them and then withdraw the cases from the division: Exhibit 1, July 26, 1937; exhibit 7, May 18, 1944; exhibit 10, February 3, 1955, and reply, exhibit 11, February 18, 1955.

STARE DECISIS

To be applied by parties in the following prior decisions of the division; it was early recognized that the division had decided most issues involved in recurring cases and the parties could prevent building up a backlog at the division by following those decisions in disposing of pending cases rather than sending "repeater" cases to the Board: Exhibit 16, August 10, 1964, in particular; also, this will be found in most of the other exhibits and universal acknowledgment that one of the primary causes of the backlogs building up, as well as inability of the division to decide a case in less than 5 to 10 years, was the refusal to follow established precedent.

SPECIAL ADJUSTMENT, REGIONAL OR SUPPLEMENTAL BOARDS

Be established on the various properties to handle cases rather than to send them to the division in the first instance, and/or to decide cases which would be withdrawn from the division; section 3, second, of the act provides for setting up special boards of adjustment on individual properties, where the parties agree to do so. With this suggestion was a related proposal that the division establish supplemental boards to handle part of the caseload, under section 3, first (w). Exhibit 5, September 28, 1942; exhibit 7, May 18, 1944, and December 26, 1942; exhibit 15, July 28, 1964, and related papers.

TIME LIMIT ON CLAIMS

Suggested that a limitation be placed on initiation of claims requiring they be filed within a given number of days, etc., exhibit 1, July 26, 1937. This has been accomplished nationally under the provisions of conductors-trainmen's agreement dated December 12, 1947, and the national agreement with the engineers, firemen, and SUNA, known as section 17, to be effective November 1, 1948.

PROPOSED CHANGES IN METHODS OF PROCEDURE ON THE FIRST DIVISION

GENERAL PROPOSALS BY CARRIER REPRESENTATIVES

Exhibit 5, covering May 20, 1942, meeting—new rules of procedure advocated for the first division.

Exhibit 7, May 18, 1944, letter similar to above.

BRIEFS TO REFEREES TO BE SHORTER

Exhibit 1, July 26, 1937; exhibit 10, February 3, 1955, and reply thereto, exhibit 11, February 18, 1955.

"EXAMINERS" TO BE EMPLOYED TO ASSIST MEMBERS

Exhibits 10 and 11, carriers' proposal of February 3, 1955, and reply thereto, February 18, 1955.

HEARINGS BEFORE REFEREES, PARTIES TO BE PERMITTED TO APPEAR

Exhibit 5, September 28, 1942 (and others), contain evidence the representatives of the carriers contended for the right to appear before referees for oral argument as a price for agreement to establish supplemental board under the act.

This was also referred to, as to appearances or request that oral hearings by division without referee be made matter of record, in exhibit 1, July 26, 1937.

ORAL ARGUMENT, LIMITATION ON

Exhibit 10, February 3, 1955, and exhibit 11, reply thereto, February 18, 1955.

PANELLING OF FIRST DIVISION MEMBERS

Demands by representatives of labor organizations (rejected by management's representatives) that the members of the division act under section 3, first (k) of the act to panel off and thus handle more cases—exhibit 1, July 26, 1937; exhibit 3, October 10, 1941; exhibit 5, September 28, 1942.

REHEARING ON CASES DECIDED

Demands by carriers for rehearings on decided cases where they were dissatisfied with the awards although the act provides the awards are final and binding—section 3, first (m)—except to the extent a "rehearing" may result in a court of law through enforcement proceedings if the award contains money and is not complied with. This is evidenced by the fact Senator Smith introduced, in Senate bill 4375 at the 76th Congress, a proposal to amend the act to provide:

"(21) After an award has been made by any division of the Adjustment Board any party thereto may at any time within sixty days from date of entry thereof make application for rehearing of the proceeding, or any matter determined therein, and such division of the Adjustment Board shall grant such a rehearing if sufficient reason therefor be made to appear. Any such application shall (not) excuse any carrier from complying with or obeying any decision, order, or requirement of any division of the Board, or operate in any manner to stay or postpone the enforcement thereof, without special order of such division of the Board. * * *"

This was done at the instance of the American Short Line Railroad and after introduction of the bill, it had copies printed, distributing them October 25, 1950, with the statement that the present law has "no similar provision" and comment, that "This paragraph is new. In substance it is substantially similar to section 17, of part 1 of the Interstate Commerce Act."

The necessity for trying to get the act amended to provide for rehearings, together with the fact that without such amendment, it does not do so, is convincing

the carriers' demands for rehearings were entitled to no consideration. In spite of these facts, more than 61 requests for rehearings were made down to November 1949, entailing handling and controversy on the division; thereafter, the carriers, aided and abetted by their members on the first division, have requested rehearings in many other cases. In recent years this unjustified conduct has precipitated disputes and ill will at the division level and resulted in protracted correspondence and dispute all the way to the National Mediation Board (upon demands of the carrier members that the NMB assign referees to settle the issues) which entail 6 months or more of handling before the carriers and their members on the division will once more accept the fact that this division is not empowered to, and does not, grant rehearings.

REFEREES NOT NECESSARY EXCEPT IN SMALL PERCENTAGE OF CASES

Exhibit 5, September 28, 1942, in particular; but also, in other exhibits it is brought out that one of the main reasons for the drop in productivity of the division with resultant increase in the backlog, is the use of referees to decide disputes similar to many others previously decided, because the members of the division will not follow the precedent of their own awards even though the same parties and agreements, etc., are involved.

It has been contended that since section 3, first (1) of the act provides for appointment of referees to break deadlocks, the managements are entitled to the service of a referee on every case where the labor members will not agree to dispose of a case as they want it decided; that since the act provides for appointment of referees where cases are deadlocked, the carrier representatives on the division have a statutory right to a referee on every case involved, that they are not required to decide disputes on their own initiative. This is treated in the statement proper, as well.

EXHIBIT No. 1

Minutes of meeting held in room 480, Union Station, Chicago, Ill., 10 a.m., July 26, 1937, with the following present:

Representing railroads: Messrs. J. T. Gillick, W. J. Etter, Wm. Atwill, R. E. Woodruff, F. T. Mitchell.

Representing organizations: Messrs. A. Johnston, F. W. Lewis, J. A. Phillips, Wm. Bishop, Paul M. Carter and R. E. Edrington, G. H. Oram.

A situation existing on the adjustment board was discussed in generalities until about noon when Mr. Gillick suggested that we meet in the board room in the Consumers Building at 2 p.m., at which time the representatives of the railroads on the adjustment board would also be present.

In the afternoon session at 2 p.m., Mr. Gillick first suggested that a committee representing both sides be appointed to clear the docket particularly on railroads where they had 40 or more cases. This suggestion was not approved by labor members and it was followed by another suggestion that cases be referred back to the railroad managements and general committees for further discussion, the cases to remain on the docket in the same order as at present. Mr. Mitchell suggested that if the committees and managements were unable to settle cases, that organizations should agree to assign officers to assist.

We were willing to have the cases handled further by the managements and the committees, but we were not willing to follow a general program of assigning officers. It was agreed that this matter would be left to each chief executive to decide, the conditions on each property to govern. It was understood, however, that this program would not interfere with the regular calendar of the board and the work, but would continue setting cases for hearing unless both parties jointly requested a postponement because of existing negotiations.

Mr. Gillick advised that the railroads would like to set up regional boards for the purpose of assisting in cleaning up the docket. We were not willing to agree to this suggestion and it received but little argument from us.

The failure of the railroads and committees to agree upon joint statement of facts was discussed and both sides favored joint submissions rather than ex parte submissions. We agreed that each side would so recommend to their constituents.

Mr. Gillick proposed fixing a date barring retroactive payments on claims beyond a period of 60 or 90 days. We called attention to the provisions of the law which fixes the right of employees as to submitting claims and we were not willing to agree upon any limitations in this connection.

Mr. Gillick suggested that the railroads should have the right to appear before the referee, or if we were not agreeable to that, we should agree to have a stenographic record kept at all hearings before the Board, such record to be made a part of the record and available, if, and when, a referee should be called in. We were not willing to adopt this procedure.

Mr. Bishop called attention to the fact that the law provides for two or more members of the Board conducting hearings and stated that the labor members had advocated such arrangement but that the railroad members of the Board had steadfastly refused to do so except upon a few occasions. Several members of Mr. Gillick's committee expressed the thought that such an arrangement would be a practical method of expediting the handling of cases and the railroad representatives of the Board were called upon by Mr. Gillick for an expression of their position and Messrs. Fowler, Knoff, Faherty, and McDonald expressed at length their objections to splitting up the Board.

During the discussion it was explained that the Board had made a consistent effort to induce the railroads and the committees to put all important information or evidence in the submission and it was suggested in most cases oral submissions would not be necessary if detailed written statements were made when the case was submitted. Messrs. Fowler, Knoff, and McDonald explained the Board's procedure and the effort that had been made to have both sides furnish all information and evidence at the time the cases are submitted.

The question of long briefs was discussed and there was general agreement it was not necessary to have such voluminous briefs as had been submitted in some cases.

The Board adjourned at 5 p.m. to meet separately tomorrow morning and to meet jointly in the Board room at 2 p.m. tomorrow afternoon.

MINUTES OF MEETING, JULY 29, 1937

Committee representing train and engine service organizations met in the Board room of the First Division at 9 a.m. with the following present:

Mr. J. A. Phillips, president, O.R.C.
Mr. A. Johnston, grand chief engineer, B. of L.E.
Mr. Fred W. Lewis, representing Mr. D. B. Robertson, B.L.F. & E.
Mr. Wm. Bishop, representing Mr. A. F. Whitney, B. of R.T.
Mr. Paul M. Carter, representing Mr. T. C. Cashen, S.U. of N.A.
Mr. R. E. Edrington, B.L.E.
Mr. G. H. Oram, O.R.C.

Consideration was given to the proposal made by the representatives of the carriers in the meeting of July 26, after which recess was had and our committee reconvened at 2 p.m. with the representatives of the railroads. The representatives of the railroads were:

Mr. J. Cannon, chief operating officer, Missouri Pacific Lines.
Mr. W. K. Etter, vice president, A.T. & S.F.R. System.
Mr. R. E. Woodruff, vice president, Erie Railroad.
Mr. Wm. Atwill, vice president and general manager, Illinois Central Railroad.
Mr. J. T. Gillick, chief operating officer, C.M. St. P. & P. RR. Co.
Mr. F. B. Mitchell, general manager, Baltimore & Ohio RR Co.

The following was submitted for consideration by the representatives of the railroads:

"The committee appointed by the carriers to confer with the heads of the organizations whose cases are handled before Board No. 1, National Railroad Adjustment Board, consisting for the carriers of—

"Mr. J. Cannon, chief operating officer, Missouri Pacific Lines;
"Mr. W. K. Etter, vice president, A.T. & S.F. Ry. System;
"Mr. R. E. Woodruff, vice president, Erie Railroad;
"Mr. Wm. Atwill, vice president and general manager, Illinois Central RR.;
"Mr. J. T. Gillick, chief operating officer, C.M. St. P. & P. RR. Co.;
"Mr. F. B. Mitchell, general manager, Baltimore & Ohio RR. Co.

and for the employees—

"Mr. J. A. Phillips, president, O.R.C.;
"Mr. A. Johnston, grand chief engineer, B. of L.E.;
"Mr. Fred W. Lewis, representing Mr. D. B. Robertson, B.L.F. & E.;
"Mr. Wm. Bishop, representing Mr. A. F. Whitney, B. of R.T.;
"Mr. Paul M. Carter, representing Mr. T. C. Cashen, S.U. of N.A.;

finds that the Board has before it 266 cases that have been heard and not decided, 1,679 cases docketed but not heard, 401 cases received, not docketed and not heard, indicating that some assistance must be rendered if either party hopes to have their cases more promptly disposed of. Therefore, it is recommended that the railroads and their committees who have cases before Board No. 1 again review the cases in an effort to dispose of them on the property.

"In submitting disputes to the First Division a jointly agreed statement of facts will materially aid the division in expediting its work.

"Discussion was had on request of carriers that there should be a stenographic record kept of oral testimony. After considerable discussion with Board members, it was agreed that with the better preparation of cases now being made by both parties, stenographic records are not necessary except there should be a record of questions by Board members and answers thereto, which would be made a part of the record in the case.

"Discussion was had on request of carriers of the necessity of placing a time limit on cases to be presented to the Board. While no understanding was reached, it was agreed the subject will receive further consideration."

The organization representatives in separate session gave consideration to the carriers' proposals and in turn submitted the following:

"The committee appointed by the carriers to confer with the heads of the organizations whose cases are handled before Board No. 1, National Railroad Adjustment Board, consisting for the carriers of—

"Mr. J. Cannon, chief operating officer, Missouri Pacific Lines;
"Mr. W. K. Etter, vice president, A.T. & S.F. Ry. System;
"Mr. R. E. Woodruff, vice president, Erie Railroad;
"Mr. Wm. Atwill, vice president and general manager, Illinois Central Ry.;
"Mr. J. T. Gillick, chief operating officer, C.M. St. P. & P. RR. Co.;
"Mr. F. B. Mitchell, general manager, Baltimore & Ohio RR.

"and for the employees—

"Mr. J. A. Phillips, president, O.R.C.;
"Mr. A. Johnston, grand chief engineer, B. of L.E.;
"Mr. Fred W. Lewis, representing Mr. D. B. Robertson, B.L.F. & E.;
"Mr. Wm. Bishop, representing Mr. A. F. Whitney, B. of R.T.;
"Mr. Paul M. Carter, representing Mr. T. C. Cashon, S.U. of N.A.

"finds that the Board has before it 266 cases that have been heard and not decided, 1,679 cases docketed but not heard, 401 cases received, not docketed and not heard.

"It is recommended that the railroads and the committees meet and endeavor to dispose of as many of the unheard cases as possible in advance of hearing date.

"If hearing date is set while the parties are negotiating, said parties may consistently, jointly request postponement of the hearing.

"In submitting disputes to the First Division a jointly agreed statement of the facts will materially aid the Division in expediting its work and it is so recommended.

"Discussion was had on request of carriers that there should be a stenographic record kept of oral testimony. After considerable discussion with Board members, it was agreed that with the better preparation of cases now being made by both parties, stenographic records are not necessary."

After considerable discussion, agreement was reached as follows:

"The committee appointed by the carriers to confer with a like committee of executives of the train and engine service organizations whose cases are handled by the National Adjustment Board, First Division, composed of the following representatives of the carriers:

"Mr. J. Cannon, chief operating officer, Missouri Pacific Lines;
"Mr. W. K. Etter, vice president, A.T. & S.F. Ry. System;
"Mr. R. E. Woodruff, vice president, Erie RR.;
"Mr. Wm. Atwill, vice president and general manager, Illinois Central Ry.;
"Mr. J. T. Gillick, chief operating officer, S.M. St. P. & P. RR. Co.;
"Mr. F. B. Mitchell, general manager, Baltimore & Ohio RR. Co.

"and the following representatives of the employees:

"Mr. J. A. Phillips, president, O.R.C.;
"Mr. A. Johnston, grand chief engineer, B. of L.E.;
"Mr. Fred W. Lewis, representing Mr. D. B. Robertson, B.L.F.E.;
"Mr. Wm. Bishop, representing Mr. A. F. Whitney, B. of R.T.;
"Mr. Paul M. Carter, representing Mr. T. C. Cashen, S.U. of N.A.

"finds that the Board has before it 266 cases that have been heard and not decided, 1,679 cases docketed but not heard, 401 cases received, not docketed and not heard.

"It is recommended that the railroads and the committees meet and endeavor to dispose of as many of the unheard cases as possible in advance of hearing date.

"If hearing date is set while the parties are negotiating, said parties may consistently, jointly request postponement of the hearing.

"In submitting disputes to the First Division a jointly agreed statement of the facts will materially aid the Division in expediting its work. And it is so recommended."

This agreement represents substantially counterproposal made by the organizations' representatives.

It was agreed that the organizations would send a circular letter out to their general chairmen, advising them of the agreement reached and that the representatives of the railroads would do likewise, to Mr. Pelley, it being understood that the foregoing proposals in the nature of a recommendation to the carriers and the organizations, in no way interferes with the operation of the First Division of the National Railroad Adjustment Board, which Board will proceed with its work under its rules.

(Signed) A. JOHNSTON,
Grand Chief Engineer, B. of L.E.
(Signed) FRED W. LEWIS,
Representing Mr. D. B. Robertson, President, B. of L.F. & E.
(Signed) J. A. PHILLIPS,
President, O.R.C.
(Signed) WM. BISHOP,
Representing Mr. A. F. Whitney, President, B. of R.T.
(Signed) PAUL M. CARTER,
Representing Mr. T. C. Cashon, President, S.U. of N.A.

EXHIBIT No. 2

BROTHERHOOD OF RAILROAD TRAINMEN,
Cleveland, Ohio, January 23, 1940.

Chairman, General Grievance Committee, Brotherhood of Railroad Trainmen, United States.

DEAR SIRS AND BROTHERS: For some time past we have been greatly concerned because of the accumulation of cases before Division No. 1, National Railroad Adjustment Board. Conferences have been held by committees representing the railways and committees representing the organizations without anything being accomplished.

Some weeks ago the transportation executives conferred with the labor members of the Board, in Cleveland, and the proposed program of the carriers to revise the rules governing the conduct of the Board was vetoed by us as a revision of said rules, according to our analysis, contemplated further delays in the handling of cases.

Where all of the parties involved in a dispute have a desire to do the right thing it is usually adjudicated without much delay. There arise, however, disputes that we refer to as borderline disputes, which are referred to the Adjustment Board, and in such cases it is reasonable to anticipate that there might be a deadlock which would necessitate the appointing of a referee to decide said deadlock.

When the law as amended became effective, we anticipated that for a short period many cases would be referred to the Board, and after decisions had been rendered that such decisions would settle or dispose of many principles involved, and thereafter the men and management would be willing to dispose of typical cases under decisions of the Board that had a definite bearing on such cases.

Several years have passed, and there have been a sufficient number of decisions rendered by the Board to clarify any doubt that might have existed with reference to the proper application of many of our schedule rules. However, a number of railroad managements have declined to recognize the weight and force of decisions handed down by Division 1 of the Board, and where our committees have 60 or 70 claims predicated upon the same rule, involving the

same principle, these managements are requiring them to make an equal number of submission to the Board, which has resulted in clocking the progress of the Board, and has brought about great delay in the handling of disputes, which delay has created much dissatisfaction and is harmful to the men as well as to the carriers.

There are several hundred cases now pending on an eastern railroad, and the principles involved in most of these cases have already been settled by the Board. We have approximately 500 cases before the Board from another eastern railroad, and one of the vice presidents of this carrier, who is well informed, is alleged to have made the statement that there were but 17 principles involved. If this officer is correct, then Division No. 1 of the Board should be called upon to adjust but 17 cases, namely, a case representing each of the principles referred to. However, we are confronted with the stupid, unbusinesslike spectacle of being obliged to take 500 cases to the Board instead of 17.

Such philosophy on the part of the carriers does not have the ring of cooperation, and indicates a desire on their part to delay the handling of grievances by clogging the channels of the Board with a lot of cases that should be disposed of on the ground under the terms of the contract involved as interpreted by the committees and concurred in by Division 1 of the Board.

This letter is written for the purpose of securing information from each of you with reference to the number of cases that you have before the Board at this time, together with the number of cases that have been denied and will later be referred to the Board, and the number of principles involved in such cases. To illustrate my point—in your reply you might say: "We now have 50 cases before the Board, 100 cases that are being written up, total 150 cases, in which 11 principles are involved. Of the principles involved nine of them have heretofore been passed upon by the Board."

Upon receipt of this information we will make an analysis with the thought of taking steps (if the other transportation organizations will go along) to refrain from referring cases to the Board where the principle has heretofore been settled, and submit such cases in a strike ballot to the membership, thereby placing the issue at the doorsteps of those managements that are attempting to wreck the law that has been provided for the settlement of disputes between carriers and their employees.

Will you favor me with a reply to reach my office not later than February 15, 1940?

With best wishes, I am,
Fraternally yours,

A. F. WHITNEY, *President.*

Copy to all vice presidents.

EXHIBIT NO. 3

BROTHERHOOD OF RAILROAD TRAINMEN
CLEVELAND, OHIO

CHICAGO, ILL., *October 10, 1941.*

Mr. A. JOHNSTON, G.C.E.,
Brotherhood of Locomotive Engineers,
Cleveland, Ohio.
Mr. H. W. FRASER,
President, Order of Railway Conductors & Brakemen,
Cedar Rapids, Iowa.
Mr. D. B. ROBERTSON,
President, Brotherhood of Locomotive Firemen & Enginemen,
Cleveland, Ohio.
Mr. T. C. CASHEN,
President, Seafarers Union of North America,
Buffalo, N.Y.

DEAR SIRS AND BROTHERS: During the past 3 years we have held several conferences with railroad executives and on various occasions have discussed among ourselves the unfortunate situation existing on the First Division, National Railroad Adjustment Board, due to an accumulation of cases in that Division, which on September 1, 1941, exceeded 5,500; in other words, the Division is about 4 years behind in its work. Many of these cases came from but a few railroads.

To illustrate this point, I have information that 2,330 or 42 percent of said cases came from 4 railroads as follows:

Texas & Pacific	239
Southern Pacific (Pac)	358
Louisville & Nashville	706
Pennsylvania Railroad	1,027
Total	2,330

I am enclosing a statement showing the details of the particular cases referred to above.

An analysis of the situation shows the following factors to be largely responsible for the number of cases presented to the Division and the delay in handling them:

First: The refusal of the carriers to recognize precedents already established by decisions of the First Division, and the requirement that the organizations submit hundreds of typical cases for decision, which has created a topheavy docket.

Second: The iniquitious attitude of the carrier members on the First Division in declining to subdivide Division 1—which is permitted under the act—for the purpose of expediting the handling of cases.

It will be recalled that the carriers wrecked the old railway labor law by refusing to comply with the provisions of the law when organizations with limited economic strength were involved. Further, the record shows that in practically every instance where the weaker organizations requested arbitration the carriers declined to arbitrate. It is evident that the railroads who are now attemptiing to emasculate the rules under which their employees work are likewise attempting to destroy the usefulness of the National Railway Adjustment Board, and unless the railway labor organizations, and especially the transportation group, take immediate steps to defend the act and reestablish the worth of the Board, permitting the law to function as was intended by the Congress of the United States, we will have another wrecked law on our hands.

In the hope of arresting the efforts of the railways to destroy the law and impede the work of the Board, I suggest that we adopt the policy and take the position that grievances (schedule violations) involving schedule rules where typical cases have been passed upon by the First Division, be not hereafter referred to said Division, but placed in a strike ballot and prosecuted under the laws of the respective organizations.

Let me further suggest that instructions be issued to our chairmen along the above indicated lines and that the

Texas & Pacific
Southern Pacific (Pac)
Louisville & Nashville
Pennsylvania Railroad

be given special treatment.

Fraternally yours,

A. F. WHITNEY,
President.

cc: Chairman of T. & P., S. P., L. & N., Pennsylvania Railroad.

EXHIBIT No. 4

BROTHERHOOD OF RAILROAD TRAINMEN,
Cleveland, Ohio.
Bay Village, Ohio, September 15, 1942.

Hon. JOSEPH B. EASTMAN,
Director, Office of Defense Transportation,
Washington, D.C.

DEAR SIR: While conferring with you and your associates on September 4, 1942, Mr. D. B. Robertson, president of the Brotherhood of Locomotive Firemen & Enginemen, and the undersigned called your attention to the effort on the part of some of the railroads to destroy the usefulness of the National Railroad Adjustment Board, First Division, by failing to settle disputes with

committees representing the organizations, and since that time there has been no improvement in the situation. As a matter of fact the Pennsylvania management is the only one that has seemed to take any interest in attempting to relieve this deplorable situation.

I am enclosing statement furnished by the Secretary of the National Railroad Adjustment Board, showing the cases docketed and pending by the railroads as of August 31, 1942, and you will note that there was a total of 5,824.

In a recent settlement made by and between the Pennsylvania management and the Brotherhood of Railroad Trainmen, it is estimated that approximately 90 percent of the 1,017 cases pending before the Board from the Pennsylvania Railroad will be adjusted between management and the committees.

I am also enclosing a statement containing a partial list of disputes before the First Division, National Railroad Adjustment Board, which will be published in the October issue of the Trainman.

It seems to me that it would be appropriate for the ODT to take steps to bring about a correction of the situation existing on the National Railroad Adjustment Board.

Very truly yours,

A. F. WHITNEY, *President.*

cc: Messrs. Johnston, Robertson, Fraser, and Cashen. bcc: All general chairmen, P.R.T. United States.

EXHIBIT No. 5

BROTHERHOOD OF RAILROAD TRAINMEN,
Cleveland, Ohio, September 28, 1942.

To Chairmen, General Grievance Committees, Brotherhood of Railroad Trainmen, United States.

DEAR SIRS AND BROTHERS: You should have in your file a memorandum, dated May 6, 1940, reviewing up to that date events indicating an effort on the part of the railroads, and perhaps others, to impede and even destroy the effectiveness of the work of the National Railroad Adjustment Board, First Division. Subsequent to the events chronicled in that memorandum, the chief executives of the engine and train service organizations requested conference with Mr. M. W. Clement, president, Pennsylvania Railroad, as a result of which a meeting was finally secured with a committee of six representing the railroads, on March 21, 1941, when the organization representatives proposed:

(*a*) That an additional panel be set up to handle First Division cases.

(*b*) That decisions on standard rules, made by the Adjustment Board, be adopted in settlement of disputes on all roads.

(*c*) That decisions of the Adjustment Board applicable to individual roads be considered as precedents on those roads.

The railroad representatives stated they did not believe they could "sell" these propositions unless the "rules of procedure" suggested for the Adjustment Board in 1939 could be adopted. (Such suggested rules are outlined in the memorandum of May 6, 1940, referred to herein.)

On January 27, 1942, the carrier members of the First Division of the Adjustment Board presented to the labor members a proposal for change in rules of procedure of the First Division. On March 20, 1942, they insisted up a vote on resolution embodying the proposed changes. The resolution failed of adoption, whereupon the carrier members filed request with the National Mediation Board that it appoint a referee to sit with the Division and resolve the deadlock on question of adoption of the proposed rules. The labor members filed objection to this request of the carrier members. The law does not contemplate that referees shall be appointed for any purpose other than to sit with the Division in making an award.

The propsed rules embodied most of the objectionable features of the 1939 proposal. Under date of August 4, 1942, acting Attorney General Fahey rendered an opinion on the matter, copy of which is attached. It will be noted that the Attorney General was of the opinion that a referee should not be appointed by the National Mediation Board to resolve the deadlock on question of adoption of changes in rules of procedure.

On April 2, 1942, the chief executives of the organizations interested in the First Division addressed a letter to Mr. Joseph B. Eastman, Director, Office of Defense Transportation, advising that they felt it appropriate that they discuss with him certain problems, "the solution of which is essential to maintenance of amicable relations between men and management," and requested that he suggest an early date for conference.

This conference was held April 18, 1942, when all of the difficulties experienced in connection with functioning of the Board and securing observance of its decisions were reviewed. The matters called to Mr. Eastman's attention included:

(*a*) Accumulation of unheard or undecided cases and congestion of the First Division docket.

(*b*) Refusal of carrier representative members on the First Division to concur in subdivision of the Division into panels for the purpose of conducting hearings as authorized by section 3(k) of the Railway Labor Act.

(*c*) Refusal of the carrier representative members on the First Division to concur in establishment of a supplemental board, as authorized by section 3(w) of the act.

(*d*) Refusal of certain managements to concur in observance of decisions of the Division, involving standard rules, in disposition on the property of subsequent cases arising under those same rules, and involving like circumstances. Thus additional cases are forced to the Division unnecessarily.

(*e*) Refusal of some managements to accept, as precedents for settlement of subsequent cases, decisions involving rules of the agreement applicable on their own railroad. Thus additional cases are forced to the Division unnecessarily.

(*f*) Refusal of managements to make joint submissions to the Division, thus forcing the making of ex parte submissions by the employees, which involves more elaborate procedure and more delay.

(*g*) Increase in number of "deadlocks" on the Division, requiring reference of such disputes to referees, creating further delay. The employees feel that since many of these "deadlocks" are on cases, the principles of which have been previously decided, the hope of the carrier members is that succeeding referees will render conflicting awards.

(*h*) The effort of management in several instances to obtain rehearings either before the Division, or before referees, after awards were rendered.

(*i*) The necessity in many cases for the exercise of pressure to obtain proper application of awards.

(*j*) The effort of the carrier representative members of the First Division to have adopted rules of procedure by the Board, which would have the effect of slowing down rather than accelerating the work of the Division.

Mr. Eastman was advised that it was the wish of the employees in engine, train and yard service to cooperate with the Government and with their employers in every way possible to the end that there be no interference with the war effort, and that management should be held equally accountable for the success of the war transportation effort. He was further advised that there could be no excuse for continued sniping at the Adjustment Board and its awards by certain managements, and for the obstructive tactics pursued and yet being pursued by carrier interests in respect to the First Division and application of its awards. He was advised that unless an improvement could be effected through his administration of the Office of Defense Transportation, it would be necessary that the situation be brought to the attention of the President.

Shortly after this conference a representative of the Office of the Director of the Budget was in Chicago and interviewed each of the members of the First Division of the Board. He also discussed the situation with the undersigned and some of the other executives.

Under date of May 7, 1942, the following letter was received by the chief executives from Mr. H. D. Barber, vice president, Erie Railroad:

"During the discussion in Washington involving wage demands and other matters that came before the conference, there was considerable said about the workings of Division 1 of the National Railroad Adjustment Board as to the decisions of that Board, the manner in which it was functioning and the very large docket that had been accumulated. As you will recall, this discussion took place

on Sunday evening, November 30, 1941, when a subcommittee and yourselves were in conference. At that time it was stated by one of your group that you gentlemen would be willing to meet with representatives of the carriers for the purpose of discussing these problems with the hope that we may be able to work out something that would alleviate the situation and be of mutual benefit to both the carriers and the employees.

"At a meeting held in Chicago on Wednesday, May 6, a committee composed of two carrier representatives from each region, who were members of the negotiating committee above mentioned, was created for the purpose of meeting with you gentlemen in an endeavor to reach some mutual understanding. This committee is composed of:

"For the East: Messrs. H. A. Enochs, H. D. Barber.

"For the West: Messrs. H. E Stevens, J C Torian.

"For the Southeast: Messrs. J. B. Parrish, L. L. Morton.

"Mr. Enochs and myself were asked to contact you gentlemen for the purpose of naming a date and place for such meeting, and with Mr. Enochs' consent I am therefore taking the liberty of addressing this letter to you for that purpose.

"Will you please advise."

Later advice resulted in meeting with the above committee (except Mr. Torian, absent account of illness) in Chicago on May 20, 1942. At that meeting all the matters brought to Mr. Eastman's attention were called to the attention of the railroad management committee. That committee stated they were acting voluntarily in a "missionary" capacity for the purpose of ascertaining what might be done to facilitate the work of the Division and wished to discuss the matter with the chief executives and have their views. They stated they had no authority to conclude any agreement or understanding, but would make the representatives of other railroads acquainted with the views of the chief executives and would endeavor to have developed a concrete program, with a view to reaching some common ground and arrange for a further conference at a later date. There appeared to be a desire to reach a satisfactory solution of the difficulties being experienced and to collaborate in some action which would reduce the number of cases pending on the Division's docket. The following definite suggestions or proposals were submitted to the carrier committee by the chief executives:

(*a*) That an auxiliary or supplemental board be created to sit at Chicago to conduct hearings and make findings upon disputes under the same procedure as to the existing Division.

(*b*) That both the present Division and the proposed supplemental Division divide into at least two panels, as authorized by the Railway Labor Act, for the purpose of conducting hearings.

(*c*) That managements and committees avoid sending "repeater" cases to the Board, and agree that where there are a number of claims involving the same principle, only one will be submitted to the Board, and both management and committee will be governed by the decision in that case. This principle to apply to cases already docketed.

(*d*) That every effort be made to file joint submissions, and especially to agree upon a joint statement of facts.

Attention of this railroad committee was also called to the action of railroads in numerous instances in attempting to secure rehearings by regular members of the Division or hearings before referees with the evident desire to impede the progress of the Board. Two outstanding cases were then pending:

(*a*) Request of the Atchison, Topeka & Santa Fe Railway for rehearing in connection with a number of awards.

(*b*) Request of the Great Northern Railway for privilege of appearing before the referee when he considered cases that had previously been deadlocked by the regular members of the Division.

The Acting Attorney General rendered opinion in each of these requests, copy of which is attached.

The committee representing the carriers advised that they would promptly communicate with representatives of the railroads and arrange for a further conference with the chief executives. Such conference was later arranged for

Chicago, Ill., July 31, 1942, at which time there were present for the carriers the following:

H. D. Barber (Erie Railroad), chairman.
L. L. Morton (L. & N.).
M. J. Byrnes (Nor. Pac.).
R. C. White (Nor. Pac.).

Absent from carriers' committee:

H. A. Enochs (Penn. R.R.).
J. B. Parrish (C. & O.).
J. G. Torian (So. Pac.-Pac.).
H. E. Stevens (Nor. Pac.).

Present for the organizations:

A. Johnson, B. of L.E.
C. J. Goff, B. of L.F. & E.
H. W. Fraser, O.R.C.
A. F. Whitney, B. of R.T.
P. M. Carter, S.U. of N.A.
W. P. Kennedy, B. of R.T.
W. G. Cantley, B. of R. T.

At this conference the carrier representatives attempted to obtain some commitment from the chief executives to the end that in return for concurrence in establishment of another Board to supplement the First Division, there would be agreement on certain changes in rules of procedure of the Division. They especially contended that there should be rehearings before referees in deadlocked cases. They argued that the changes in rules previously proposed by the carrier representatives should be adopted. They stated that lack of opportunity to appear before referees placed the carriers at a disadvantage for the reason that so much time elapsed between hearing of a case by the regular members and consideration by referees that much of the oral argument originally advanced was lost sight of or forgotten. They were reminded that there were an equal number of management and organization members on the Division, and that the former had the same opportunity to place the facts before the referee as the latter.

The carrier representatives consumed much time in complaining about the decisions rendered by the Board, and especially with referees sitting; claimed in many instances they were in disregard of practices and understandings on individual roads and contracts negotiated by practical men who knew what they meant. They claimed the Board had adopted certain principles and adhered to them, regardless of rules of individual schedules. They referred particularly to decisions involving pay to roadmen for terminal service.

Much of the time of the conference was taken up with complaints of the carrier representatives against the manner of functioning and the character of decisions rendered by the present First Division. They were reminded that neither the matter of changes in rules of procedure nor any dissatisfaction on the part of anyone with awards of the Board had anything to do with the question of whether or not another Board should be established to relieve the situation on the First Division. The carrier representatives were reminded that the employees had cheerfully accepted awards which were not favorable to them, and that managements had not shown that same spirit.

After several hours discussion there still appeared to be a lack of clarity concerning authority of the railroad representatives' committee to agree upon establishment of a supplemental board. They appeared rather to be sparring for changes in manner of functioning of the present Division, with the idea of basing final disposition of the matter on a trade which would only complicate present procedure. This would, of course, impair the benefit to be obtained by creation of the additional tribunal. In response to a direct question as to whether the carrier representatives had authority to reach final agreement, it developed that they did not and that they were only empowered to meet and discuss the situation and thereafter take back a recommendation to the contact committee. It was intimated to the chief executives that if agreement on rules of procedure to govern the Division could be reached, there should be no difficulty in reaching agreement on establishment of a supplemental board, but if

agreement on rules of procedure could not be agreed upon, it was doubtful whether agreement could be reached on the board matter.

In summing up it may be stated that:

(1) The carriers' committee was not vested with any authority to agree upon any definite proposals.

(2) Their object seemed to be to obtain commitments from the chief executives with respect to change in existing rules of procedure of the Board, and particularly in regard to the method of handling ex parte submissions.

(3) The committee made no definite commitment that agreement could be reached on the establishment of a supplemental board under any circumstances, but on the contrary very definitely stated that agreement could not be reached on the establishment of a supplemental board unless changes in rules of procedure could be brought about.

(4) The chief executives were definite in their position that they could not and would not attempt to direct the organization representatives on the Board, and that they did not concur in the thought that revision of rules was necessary.

(5) The chief executives were positive in their assertion that something must be done to relieve the situation and that the solution was the appointment of a supplemental board.

(6) They were also definite in their statement that they expect to pursue the matter through other channels unless agreement could be reached on the establishment of a supplemental board without a great deal of further delay.

Not having heard from Chairman Barber up to August 25, the chief executives wrote him on that date as follows:

"This refers to conference held at the Union League Club in Chicago on July 31, at which you served as chairman of the subcommittee of the interested railroads, when we further discussed the situation pertaining to the First Division of the National Railroad Adjustment Board. It will be recalled that the matter was also discussed at a conference in Chicago on May 20, although we had previously written to the Director of the Office of Defense Transportation upon the subject.

"The situation mentioned is growing worse as time goes on and in our opinion definite steps should be taken to bring about an improvement. We have asked, as you know, that the carriers agree with us to establish an auxiliary board to assist in disposing of the accumulated docket.

"It was our understanding when the July 31 conference adjourned that your committee would place the matter before the full contact committee and that we might expect to hear from you at an early date. Our purpose in writing is to suggest that this matter be handled to a conclusion to the end that another board be established in the immediate future."

Mr. Barber replied, under date of September 9, 1942:

"Referring to your letter dated August 25, which was received in my office on September 5, relative to meeting in Chicago concerning the situation pertaining to the First Division of the National Railroad Adjustment Board.

"The subcommittee reported to the full contact committee and we are now awaiting a call for a general meeting of the full contact committee to discuss this problem. I am today referring a copy of your letter to Mr. W. K. Etter, who is chairman of the full contact committee, and assume that he will without undue delay cause a reconvening of the full contact committee to handle this subject."

To this letter the following acknowledgment was made by me under date of September 15, 1942:

"I am in receipt of your letter of September 9, 1942, addressed to Messrs. Johnston, Robertson, Fraser, Cashen, and the undersigned, advising that you are referring copy of our letter of August 25, 1942, to Mr. W. K. Etter, chairman of the full contact committee for the railways delegated to deal with the Adjustment Board situation.

"I desire to urge that Mr. Etter be made acquainted with the importance and necessity for this question being brought to a conclusion at an early date, and I trust that you will see that he is furnished with appropriate information."

On August 28, 1942, the chief executives of the organizations interested in the First Division addressed a letter to Dean Lloyd K. Garrison, University of Wisconsin Law School, requesting that he prepare an opinion on the requirements of the Railway Labor Act in the circumstances involved in the situation covered by the opinion of Acting Attorney General Fahey. Copy of this letter is attached. Dean Garrison has advised that he will be unable to prepare this opinion account of now being engaged in Government service.

On September 15, 1942, I wrote the Honorable Joseph B. Eastman, Director, Office of Defense Transportation, copy of which is attached.

Thereafter I suggested to the chief executives that we employ Attorney Bernard M. Savage, Baltimore, Md., to make an analysis of the whole matter. However, President T. C. Cashen, Switchmen's Union of North America, declined to go along; President Fraser, Order of Railway Conductors, is having an analysis made by his attorney, and Brother Johnston and I have agreed to submit the file to Attorneys Miller and Hornbeck for analysis; and Brother D. B. Robertson, of the Brotherhood of Locomotive Firemen & Enginemen, is handling the matter independently.

The foregoing is for your information. You will be kept advised of further developments.

Fraternally yours,

A. F. WHITNEY, *President.*

cc: National legislative representative; all vice presidents.

EXHIBIT No. 6

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE FOR EMERGENCY MANAGEMENT,
OFFICE OF DEFENSE TRANSPORTATION,
Washington, D.C., December 26, 1942.

Mr. W. K. ETTER.
Chairman, Three Regional Contract Committees.
Chicago, Ill.

Mr. A. JOHNSTON,
Grand Chief Engineer, Brotherhood of Locomotive Engineers,
Cleveland, Ohio.

Mr. D. B. ROBERTSON,
President, Brotherhood of Locomotive Firemen & Enginemen,
Cleveland, Ohio.

Mr. H. W. FRASER,
President, Order of Railway Conductors,
Cedar Rapids, Iowa.

Mr. A. F. WHITNEY,
President, Brotherhood of Railroad Trainmen,
Cleveland, Ohio.

Mr. T. C. CASHEN,
President, Switchmen's Union of North America,
Buffalo, N.Y.

Mr. T. K. FAHERTY,
Chairman, First Division,
National Railroad Adjustment Board,
Chicago, Ill.

Mr. P. M. CARTER,
Vice Chairman, First Division,
National Railroad Adjustment Board,
Chicago, Ill.

GENTLEMEN: My attention has been called to the large accumulation of cases pending on the docket of the First Division of the National Railroad Adjustment Board on the strength of which strong representations have been made to me that appropriate steps should be taken looking toward correcting the situa-

tion. I might say that the President also has requested me to look into the matter and endeavor to effect appropriate corrections.

Our investigation of the matter reveals that the present backlog represents more than 4 years work for the First Division. Both sides agree that the present situation is intolerable but disagree on the corrective measures which should be adopted. The organizations contend for the creation of an additional panel to handle First Division cases while the carriers maintain that an additional panel will not be effective in relieving the congestion unless certain changes are made in the Division's procedural rules. The two sides have attempted to negotiate a settlement of this problem over an exended period but without success.

Because the present congestion endangers the continued functioning of the adjustment procedure of the Railway Labor Act the situation is serious and merits urgent attention and conclusive action. I should appreciate your meeting with me and my staff in room 5136, Interstate Commerce Building, at 10 a.m. on Tuesday, January 5, 1943, to review the situation and attempt to work out corrective measures.

I should appreciate prompt advice as to whether you will be able to attend this conference.

Very truly yours,

JOSEPH B. EASTMAN, *Director.*

EXHIBIT No. 7

CLEVELAND, OHIO, *May 18, 1944.*

Mr. J. M. JOHNSON,
Director, Office Defense Transportation,
Washington, D.C.

DEAR MR. JOHNSON: During our conference on May 4, we discussed the question of delays in handling grievances submitted to the First Division, National Railroad Adjustment Board.

You suggested that we furnish you with a statement concerning the condition of the Division, and we advised you that we would submit a historical statement of the situation insofar as the First Division was concerned.

In accordance with this understanding we submit to you the following history:

The National Railroad Adjustment Board, consisting of four divisions, was created by amendments to the Railway Labor Act of 1926 approved June 21, 1934.

The First Division of the Board has jurisdiction, conferred upon it by the amendments to the act, "over disputes involving train and yard service employees of carriers; that is, engineers, firemen, hostelers, and outside hostlers, conductors, trainmen, and yard service employees." The Division consists of 10 members, 5 of whom are selected and designated by the carriers, and 5 selected and designated by the national labor organizations of employees.

The First Division met and organized immediately following the meeting of the entire Board, to wit, on July 31, 1934, however, owing to some difficulty in obtaining the necessary funds from the Government to take care of the operation of the Board, there was some delay before the Board could give consideration to cases submitted to it, but the Board met to adopt rules of procedure governing the submission of cases to the various divisions and such rules were issued October 10, 1934, and it was not until December 3, 1934, that the First Division began hearing cases.

The four regional train service boards of adjustment created by the Railway Labor Act of 1926 discontinued the consideration of cases pending before them as of July 31, 1934, and all unsettled cases pending at that time were subsequently referred to this Division. There was a considerable number of disputes pending before the old mediation board which had originated on roads not parties to regional or system boards of adjustments, and such cases which came within the jurisdiction of the new National Railroad Adjust Board were withdrawn from the mediation board and referred to Division No. 1 of the new Board.

At the time the First Division began hearing cases, December 3, 1934, there were 400 cases on hand involving disputes between the carriers and their employees, which were subject to the jurisdiction of the Division. The following shows the status of the docket of the First Division as of the fiscal years ending June 30:

Cases pending on docket

1935	1,095	1942	6,033
1936	1,461	1943	5,873
1937	1,964		
1938	2,163	1944, May 13	3,991
1939	2,577	Received and not docketed	476
1940	3,607		
1941	5,370	Subtotal	4,467

The Second Annual Report of the National Railroad Adjustment Board, for the fiscal year ended June 30, 1936, discloses the fact that although the First Division had only been active for approximately 19 months, during which time it had rendered only 1,256 decisions, some of the carriers had already declined to make effective the awards of the Board. The report states:

"Some railroad managements have insisted that the awards of the Adjustment Board were not enforcible and therefore have declined to make them effective, suggesting to the labor organizations that they present the cases to the courts."

The report, however, proceeded to strike an optimistic chord by citing a technique developed on one large system where some 90 cases were destined for submission to the Board but, instead, were disposed of through conference between officers of the carrier and of the organization. In commenting on this matter, the report stated:

"As the National Railroad Adjustment Board's decisions establish precedents, it is anticipated that a similar technique will be developed on other railroad systems. We confidently expect that within a very short span of years controversies between men and management can be settled on the roads with relatively few of them developing differences that will be necessary for the Adjustment Board to decide."

The confidence expressed in the above quotation was premature for, as will be noted from the cases pending on the docket, the cases docketed with the First Division increased steadily until 1943.

Starting with the year 1943, and continuing thereafter, the decrease in the number of cases docketed with the Board, has been due to the fact that on certain railroads, principally the New York Central system; the Pennsylvania; Baltimore & Ohio; Chicago, Burlington & Quincy; the Atchison, Topeka & Santa Fe; and the Southern Pacific (Pacific system) some of the organizations were successful in their endeavors to secure an agreement with the carriers that in order to lessen the congestion of the First Division and dispose of cases destined for submission to the Board, that the carrier would designate an officer and the organization would designate an officer, the two designated officers to be authorized to endeavor to settle all cases then filed with the Board and cases destined for submission to the Board. The ensuing result of these mutual endeavors is reflected in the decrease in the number of cases on file with the division. Unfortunately, however, but few railroad managements have signified a willingness to cooperate in such endeavor, for were the organizations successful in securing similar cooperation from the managements on other railroads the number of cases now on file with the Board and cases destined for submission to the Board would be materially reduced, thereby accelerating the handling of cases that will eventually go to the board.

As heretofore stated, in the year 1936 the carriers began endeavoring to impede and even destroy the effectiveness of the work of the Board, and especially the First Division thereof. One carrier requested permission to argue eight deadlocked cases before a referee. The request was submitted to the Board but it failed to receive an affirmative vote, although the management members of the First Division advocated hearings before referees. Upon the failure of the Board to agree upon granting the request, the carrier appealed to the referee designated to hear and decide the cases, but the referee declined to grant the

request. On request of Mr. J. J. Pelley, president, Association of American Railroads, the chief executives of the railway labor organizations met with him and a committee of railway executives on May 28, 1937, to discuss the Adjustment Board situation; Mr. Pelley stated that the Board, particularly the First Division, was behind with its work and the railroads desired to do something to enable this division to catch up. By this time many deadlocked cases had accumulated on the First Division, necessitating the use of referees, thereby further delaying the expeditious handling of cases. Mr. Pelley stated that greater effort should be made to settle cases "at home;" at which time his attention was directed to the numerous roads which compelled the labor organizations to submit cases to the Board as they declined to be governed by principles established by the Board's awards on other roads, and, in some cases, by prior awards on their own railroads. Various solutions were advanced for the improvement of the condition existing on the First Division, but no constructive action was taken.

Subsequent conferences were held between the carriers' representatives and the chief executives of the transportation organizations during the years 1937, 1938, 1939, 1940, and 1941, without any beneficial results. The cases pending on the docket of the First Division increased steadily during these years, having increased from an initial docket of some 400 cases on December 3, 1934, to 6,033 on June 30, 1942, an increase of 1,408.2 percent; while as of May 13, 1944, they totaled 4,467, or an incerase of 1,016.7 percent over December 3, 1934.

On February 16, 1939, President Roosevelt, acting upon the earlier suggestion of former Attorney General Cummings, requested Attorney General Murphy to appoint a committee to investigate the "need for reform in the field of administrative law." Accordingly, on February 24, 1939, Mr. Murphy appointed the Attorney General's Committee on Administrative Procedure to make the study requested by the President and "to suggest improvements, if any are found advisable." The Committee confined its investigation to those agencies which in a substantial way affect private interests by their power to make rules and regulations or by their power of adjudication in particular cases. Among the various agencies investigated was the National Railroad Adjustment Board.

The report of the Committee contained the following comment with respect to the National Railroad Adjustment Board:

"In general, the functions of the National Railroad Adjustment Board are in a sense, unique among the Federal administrative agencies discussed in this report. Whether the Board is engaged in 'adjudication' or in 'adjustment' or 'arbitration' is a controverted question because of its special characteristics, and also because its 'hearings' are in the first instance before members of the Board sitting in divisions, much of the discussion in the report does not apply to this agency. It may be noted, however, that the recommendations in chapter II, relating to administrative information and the preparation of opinions, apply to the Board.

* * * * * * *

"Docket congestion in Division 1: The most serious immediate problem confronting the Board is the congestion of the docket in Division 1. That Division decides some 80 percent of all the cases coming to the Board. It inherited a large accumulation of cases at the outset; it is now more than 3 years behind its docket in the decision of cases; and it is continuing to lose ground. The Railway Labor Act authorizes use of a device to reduce docket congestion. It is there provided that a Division may '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 final awards as to any such dispute must be made by the entire division as hereinafter provided. The Committee recommends that most cases now coming before Division 1 should be heard and considered by panels consisting of an equal number of labor members and carrier members (1 or more of each) instead of by the Division's full membership of 10. Because the members representing the carriers and the employees, respectively, almost invariably vote en bloc, it may reasonably be supposed that the recommendations of the two-member panel would normally be adopted by the Division. In the infrequent cases which involve interunion

disputes and in the cases which concern rivalries among diverse interests on either the carrier or the labor side, panels of four or six members might be designated, or, since they would constitute a relatively inconsiderable burden, such cases might be decided in the first instance by the entire Division."

The necessity for relieving the situation was again called to the attention of the railroad representatives during the wage conference in Washington late in November and early in December 1941. However, no definite action was taken by management representatives. Therefore, the chief executives addressed a letter to the Honorable Joseph B. Eastman, Director, Office of Defense Transportation, requesting a meeting with him to discuss matters which they felt had a definite effect on morale of railroad employees, and which bore a definite relation to orderly handling of traffic to be moved in connection with the defense of war effort. Such meeting was held on April 18, 1942, and full information regarding the situation on the First Division, National Railroad Adjustment Board, was given Mr. Eastman. His attention was called to the fact that the number of cases on the board's docket was constantly increasing; that all effort to secure a supplemental board, or a subdivision of the existing Board for the purpose of conducting hearings had been without avail; that managements of many roads continued to refuse to recognize as precedents decisions of the Division involving certain standard rules, in disposition on the property of subsequent cases arising under those same rules and involving like circumstances, thus compelling the organizations to refer additional cases to the Division unnecessarily; that some managements were so arbitrary as to decline to accept as precedents for subsequent cases, decisions involving rules of the agreement applicable on their own railroad, thus forcing additional cases to the board unnecessarily; that some managements declined to make joint submissions, thus forcing the making of ex parte submissions by the employees, which involves more elaborate procedure and more delay; that the number of cases in which the Division became deadlocked necessitating reference of claims to referees was increasing, especially in claims the principles of which had been previously decided by prior awards.

Mr. Eastman's attention was called to the number of instances where managements declined to make awards effective until forced with a threat of use of economic strength; to the effort of some managements to obtain rehearing before referees in cases where decisions adverse to the railroad position were rendered; and to the effort of managements to have the Board adopt a rule that stenographic record be made of all hearings, all of which were for the purposes of delay. He was told that all these conditions and resultant inability to get claims adjusted through the machinery provided by the Railway Labor Act were creating unrest which should be eliminated. He was told in letter, confirming matters discussed at the conference, that:

"It is the wish of the employees represented by these organizations to cooperate with the Government as well as their employers in every way possible, to the end that there shall not be the least interference with the progress of the Government's war effort. However, they believe that they have a right to expect that the management of railroads in this country will be held equally accountable for the success of the defense transportation efforts. There can be no justifiable excuse for the continued past sniping at the Adjustment Board and its awards by certain managements, and the obstructive tactics which have been pursued and are yet being pursued by carrier interests in respect to the operation of the First Division and application of its awards. Such tactics cannot be countenanced at this time, and the employees propose to insist that a spirit of cooperation and fairness be followed, at least for the duration."

At this meeting a representative of the Bureau of the Budget of the United States was present. Mr. Eastman stated he would give the matter his attention with a view of ascertaining what corrective action might be taken. Subsequently a representative of the Bureau of the Budget made an investigation at Chicago, during which he interviewed individually the several members of the First Division. He also interviewed some of the chief executives with regard to the matter discussed with Mr. Eastman.

Thereafter a committee representing the railroads proposed a conference with the chief executives "for the purpose of reaching some mutual understanding" concerning the Adjustment Board, the manner in which it is functioning and the

docket which has accumulated. Conference was held in Chicago on May 20, 1942.

The situation on the First Division of the Board was extensively reviewed and the following proposals made by the chief executives:

(*a*) That a supplemental board be created to relieve the docket of the First Division.

(*b*) That both the present division and the proposed division subdivide themselves into panels for the purpose of holding hearings.

(*c*) That no more "repeater" cases be forwarded to the Board, but that managements, as well as committees, be guided by awards heretofore rendered: where there are a number of like claims it be agreed that but one will be submitted and that the remainder will be disposed of on the property on the basis of the decision in the one submitted.

(*d*) That every effort be made to make joint submissions.

(*e*) That committees and managements of roads having large accumulation of cases meet and attempt to dispose of them, applying principles already established by decisions in former like cases.

The representatives of the railroads advised that they would make a report and thereafter advise of the position of the carriers generally at a meeting to be mutually agreed upon.

Numerous conferences were held between the chief executives and the carriers, and Mr. Eastman at various times subsequent to our conference with Mr. Eastman on April 18, 1942.

On July 31, 1942, a meeting was held between the chief executives and the carrier representatives at which time the carriers declined to concur in the chief executives' proposal to establish a supplemental board to relieve the First Division's congested docket unless the organizations would consent to changes in the rules of procedure of the First Division. These proposed changes would have permitted rearguments before referees, rehearings, etc., which would have retarded the functioning of the First Division and nullified the effectiveness of the supplemental division.

November 6, 1942, during conference with President Roosevelt, we advised him of the appalling conditions on the National Railroad Adjustment Board, particularly the First Division, resulting from the attitude of the railroads in refusing to set up subcommittees to hear cases and disregarding precedents established which require many long and tiresome hearings on cases in which the principle has already been decided and in some instances declining to settle the grievances with general committees, thus forcing them to the Board; also refusal of the carriers to apply awards of the Board. This policy on the part of the carriers had resulted in a backlog of nearly 6,000 cases before the Board, and under normal conditions some of these cases probably would not be passed upon and determined short of 4 or 5 years. We urged the President to take steps to relieve the congestion of the docket and to take steps to avoid deadlocks where issues are simple, so that the Board would be able to function as the Congress of the United States intended it should function when the law was under consideration. The President was very much interested in the case, took several notes, and said he would look into it at once. He readily agreed to take steps to relieve this situation. He also agreed with us that decided cases should serve as precedents for future cases.

In a letter dated November 20, 1942, Director of Defense Transportation Eastman replied to our suggestion that this subject matter be discussed by the railroad labor-management conference scheduled for November 23. Mr. Eastman stated that he felt the subject was too controversial for consideration by the labor-management committee in the short time available to it. However, he advised that his assistant, Mr. Otto S. Beyer, Director, Division of Transport Personnel, Office of Defense Transportation, was giving consideration to the matter.

On December 1, 1942, President Whitney wrote Mr. Eastman and reminded him that the five transportation brotherhoods had been handling this matter with the carriers for more than 5 years and that no progress had been made, and insistently appealed for prompt action, saying in part:

"Personally, I am very much in favor of harmony between management and the men, but I cannot subscribe to the wholesale violations of labor agreements

such as have been indulged in by the carriers and then require our men to submit to years of delay before consideration is even given to their complaints. Such conditions which apparently are being treated lightly by Government are enraging the rank and file in the transportation service. I sincerely hope that steps may be taken without further delay to relieve the situation complained of on the National Railroad Adjustment Board. Let us undertake to save the situation before it is too late."

Under date of December 14, 1942, Mr. Beyer replied to President Whitney's letter of December 1 to Mr. Eastman, saying he realized the gravity of the situation and that as soon as he had received a full statement from the carriers as to their position, the Office of Defense Transportation would submit proposals to both the carriers and employees.

On December 26, 1942, Mr. Eastman sent the following joint letter to the five chief executives, to the chairman of the carriers' three regional contact committees, Mr. W. K. Etter, and to the chairman and vice chairman of the First Division, National Railroad Adjustment Board:

"My attention has been called to the large accumulation of cases pending on the docket of the First Division of the National Railroad Adjustment Board on the strength of which strong representations have been made to me that appropriate steps should be taken looking toward correcting the situation. I might say that the President also has requested me to look into the matter and endeavor to effect appropriate corrections.

"Our investigation of the matter reveals that the present backlog represents more than 4 years work for the First Division. Both sides agree that the present situation is intolerable but disagree on the corrective measures which should be adopted. The organizations contend for the creation of an additional panel to handle First Division cases while the carriers maintain that an additional panel will not be effective in relieving the congestion unless certain changes are made in the Division's procedural rules. The two sides have attempted to negotiate a settlement of this problem over an extended period without success.

"Because the present congestion endangers the continued functioning of the adjustment procedure of the Railway Labor Act the situation is serious and merits urgent attention and conclusive action. I should appreciate your meeting with me and my staff in room 5136, Interstate Commerce Building at 10 a.m., on Tuesday, January 5, 1943, to review the situation and attempt to work out corrective measures.

"I should appreciate prompt advice as to whether you will be able to attend this conference."

By letter dated January 1, 1943, Mr. Beyer presented a memorandum briefly setting forth what his office understood were the views of the parties with respect to a solution of this problem. This memorandum also listed suggestions made during 1939 and 1940 by the Attorney General's Committee on Administrative Procedure. The following is quote from the memorandum:

"Both the carriers and the brotherhoods have proposed certain changes designed to meet the present problem. For ready reference they are summarized as follows:

"The carrier proposals:

"1. Revise rules of procedure to provide as follows:

"(*a*) The right of both parties to see the submission of the other and to make adequate written answer thereto, either in advance of or at the hearing;

"(*b*) The right of either party to have a transcript made of the oral hearing, if it so desires;

"(*c*) The right of both parties to furnish additional information to clear up points not adequately covered in the original submission but arising at the oral hearing;

"(*d*) The right of both parties to appear before referees, if they desire to do so;

"(*e*) The including in the awards of a clear and concise statement of the Board's reasons for reaching its award, and the facts and agreement rules upon which the award is based.

"2. Full-time referees.

"3. No interference with decisions of management in discipline cases unless such decisions are unsupported by any reasonable evidence.

"4. A more sincere effort by both parties to settle their problems at home, as was the practice before the creation of the National Railroad Adjustment Board and during the early existence thereof. Conflicting decisions from the First Division doubtless excuse a reluctance to make settlements at home, but that reluctance would disappear if the parties become convinced that a specific case, if submitted to the Board, would be decided by the latter on the basis of the facts, and not on the basis of other facts, rules, and practices, or by the Division making a new rule to fit the occasion.

"5. Time limit on claims.

"6. Hearing panels as provided in section 3(k) of the act.

"The carrier proposals for revised procedural rules as well as a time limit on claims and hearing panels were included among the recommendations of the Attorney General's Committee. The remainder of the carrier proposals are their own suggestions for dealing with the problem.

"The brotherhood proposals:

"1. An additional panel to be set up to handle First Division cases.

"2. Awards on standard rules to be adopted in settlement of disputes on all carriers.

"3. Decisions applicable to individual roads to be considered as precedents on those roads.

"Other proposals: Section 3, First (w) of the Railway Labor Act which provides for regional adjustment boards suggests still another method for relieving the congestion. * * *

"As stated previously the President has requested this Office to develop and report to him on ways and means for disposing of the backlog of cases pending before the First Division. I believe all interested parties will agree that the best plan would be one agreed to voluntarily by the brotherhoods and the carriers. For this reason both sides are requested to review their respective positions with a view toward compromise in an effort to dispose of this matter by agreement at the forthcoming conference, thus enabling the Office of Defense Transportation to advise the President accordingly."

As heretofore stated, the situation with regard to the large number of cases pending before the Board became so acute during 1943 that it threatened to seriously undermine the morale of the railway employees. Several railroad managements, aware of the tension created by the long delays in the handling of cases submitted to the Board, entered into agreements with the brotherhood for the settlement of pending cases in conference and their withdrawal from the Board.

Those carriers were the Baltimore & Ohio, the New York Central (including the Indiana Harbor Belt), the Pennsylvania Railroad, Southern Pacific (Pacific System), the Atchison, Topeka & Santa Fe; and the president of the Chicago, Burlington & Quincy Railroad entered into a similar agreement with the chief executives of the four transportation brotherhoods resulting in the adjustment of approximately 100 cases.

Approximately 1,000 cases were also settled by and between the Pennsylvania management and the BRT committees and withdrawn from the Board.

So successful has this procedure been in improving labor relations that other railroad managements became impressed thereby.

On November 11, 1943, Mr. Otto S. Beyer, of the ODT, advised the chief executives of the five transportation brotherhoods that he hoped to bring about a resumption of negotiations between the carriers and the organizations on proposals designed to relieve the congestion of the docket before the First Division of the Board, about December 1, 1943. On November 29, 1943, Mr. Beyer advised that all the conferees would not be available during December, and he suggested that the conferences not be resumed until after January 1, 1944, when he would endeavor to arrange a definite date as soon as possible. The conference suggested by Mr. Beyer has not been held.

While in conference with Justice James F. Byrnes, Director, Office of War Mobilization, of February 9, 1944, we advised him of the delay experienced in

having cases disposed of by the First Division and stated there were approximately 5,000 cases backlogged at that time, stating that we had held conferences with the railroads and urged that an additional board be appointed to relieve the sitution. We also advised him that the subject matter had been discussed with the President on November 6, 1942, and that the President had written a memorandum urging the railroads to give favorable consideration to the adoption of precedents in disposing of cases with their committees. After considerable discussion of the situation Justice Byrnes advised us he would call the matter to the attention of the President.

We are appending five tabulations which illustrate the condition of the First Division and the refusal of the carriers to apply awards. These appendixes consist of—

1. Awards that have not been applied by the carriers.
2. Status of First Division docket as of May 13, 1944.
3. Cases docketed by Division by calendar years, awards rendered by Division by calendar years, awards rendered by referees by calendar years, total awards rendered by calendar years, and withdrawn cases by calendar years.
4. Hearings waived by fiscal years.
5. List of cases to be heard as of January 10, 1944.

This brief history will acquaint you with the deplorable condition that has existed, not only since the inception of the Board, but which has grown worse during the ensuing years.

Very truly yours,

A. JOHNSTON,
Grand Chief Engineer, BLE.
A. F. WHITNEY,
President, BRT.

APPENDIX NO. 1

First Division, NRAB awards that have not been applied (as of May 9, 1944)

Railroad	*Number of awards*
Atchison, Topeka & Santa Fe	18
Baltimore & Ohio, Chicago terminal	1
Chicago & North Western	10
Chicago, Rock Island & Pacific	15
Chicago, St. Paul, Minneapolis & Omaha	3
Chicago, Indianapolis & Louisville	1
Central Railroad of New Jersey	6
Central of Georgia	1
Conemaugh & Black Lick	1
Duluth, Missabe & Iron Range	8
Erie	7
Grand Trunk	1
International-Great Northern	2
Illinois Central	1
Indiana Harbor Belt	1
Minneapolis & St. Louis	1
Missouri Pacific	1
Missouri Pacific-Gulf Coast Lines	1
Oregon & North Western	1
Southern Pacific	1
Union Railway of Memphis	1
Wichita Falls & Southern	1
Total	84

NEW YORK, N.Y., *June 7, 1945.*

NATIONAL RAILROAD ADJUSTMENT BOARD

Excerpt from minutes of meeting of "5" engine and train service labor chiefs and railroad presidents at the Waldorf-Astoria Hotel, New York, 10 a.m., June 7, 1945 (embracing statement of Mr. E. J. Connors).

Present:

T. C. Cashen, president, Switchmen's Union of North America.
H. W. Fraser, president, Order of Railway Conductors.
A. Johnston, G. C. E., Brotherhood of Locomotive Engineers.
A. F. Whitney, president, Brotherhood of Railroad Trainmen.
Carl Goff, assistant president, Brotherhood of Locomotive Firemen & Engineers.
Roy Hughes, vice president, Order of Railway Conductors.
John Lundergan, vice president, Switchmen's Union of North America.
D. A. MacKenzie, vice president, Brotherhood of Railroad Trainmen.
L. W. Baldwin, chief executive officer, Missouri Pacific Railroad.
J. D. Farrington, chief executive officer, Rock Island Line.
F. G. Gurley, president, Santa Fe System.
W. M. Jeffers, president, Union Pacific Railroad.
J. B. Hill, president, Louisville & Nashville Railroad.
W. J. Jenks, president, Norfolk & Western Railway.
R. W. Brown, president, Reading Co.
M. W. Clement, president, Pennsylvania Railroad (chairman).
F. R. Gerard, president, Lehigh Valley Railroad.
G. Metzman, president, New York Central System.
H. S. Palmer, president, New Haven Railroad.
R. D. Starbuck, executive vice president, New York City System.
R. B. White, president, Baltimore & Ohio Railroad.
Wm. White, president, Delaware Lackawanna & Western Railroad.

Also present: E. J. Connors, vice president, Union Pacific Railroad.

When the meeting was convened on the morning of June 7, Mr. Whitney expressed the desire to have Mr. Connors discuss the situation of Division 1 of the Adjustment Board.

Mr. Connors outlined fully what he is doing on the Adjustment Board situation, summing up his work in two categories:

1. Clearing up the backlog of cases.
2. Determining a more fundamental solution of why there are so many disputes.

Mr. Connors further said the backlog of cases has been reduced by a gross of 650 cases since March 1, mainly by roads in the East and South, but this gain has been offset by an increase in the number of cases from the West, so that the net reduction of cases has been about 425.

Mr. Connors said that his study of the procedure of the Board itself has indicated that the railroad members of that Board are not working on the basis of accepting prior precedents and allowing them to govern the cases. That would clear up a lot of cases before the Board. He further stated the greatest proportion of the cases could be separated between a few general principles, and if the members of the Board would permit previously arrived at precedents to govern the cases falling within a particular category, it would clear up the biggest portion of the cases. As an instance, Mr. Connors said the question of road crews performing switching has had 1,500 decisions rendeerd on it. Another instance of a large portion of cases is payment for a minimum day; that a large percentage of these cases have absolutely no basis for being before the Board. As an instance here, Mr. Connors told of a claim for a minimum day because a pair of safety shoes were carried in the baggage car of a passenger train.

Mr. Connors closed by stating that the solution of the Adjustment Board would seem to lie in the clarification of rules, which he understood was being done by the Committee of Eleven.

After Mr. Connors completed his statement, there was considerable discussion by both sides of the table, which acknowledged that progress is being made, and the conclusions arrived at in these meetings was indicative of further progress.

* * * * * * *

A.F.W.

EXHIBIT No. 8

THE WHITE HOUSE,
Washington, February 13, 1945.

MR. EDWARD J. CONNORS,
Care of Union Pacific Railroad Co.,
Omaha, Nebr.

DEAR MR. CONNORS: I am informed that there are approximately 5,000 undecided cases pending before the First Division of the National Railroad Adjustment Board.

The late Mr. Joseph B. Eastman, Director of the Office of Defense Transportation called extended conferences between the representatives of the railroads and the railway brotherhoods, but they failed to result in any agreement, and very little progress has been made since toward cleaning up the accumulation.

Meanwhile, additional cases are being submitted in a volume in excess of the Board's capacity to decide them. The brotherhood executives contend that most of these additional cases, as well as the pending cases, cover disputes and questions of labor agreement applications already decided by previous rulings of the Board. I am advised that this delay in decision and the resultant accumulation of cases before the First Division of the Board have been discussed frequently and over a long period of time in conferences between representatives of the railroads and the brotherhoods concerned; but an analysis of the detailed nature necessary properly to determine the applicability of prior decisions to pending cases has never been made. It is stated also that some railroads have declined to apply decisions that have been rendered by the Board.

I am asking you to undertake an analysis and make a report and recommendation to me as a basis for action that will dispose of the problem. You are hereby delegated to make a study of the disputes filed with the First Division of the National Railroad Adjustment Board and now pending undetermined before that Board, and render a full report thereon to me with your recommendations for:

(*a*) Settlement or disposition of such disputes;

(*b*) Reduction in the number of controversies submitted to the First Division of the Board and improvement in methods and procedure for the more expeditious handling of cases.

For the purpose of this delegation, you are authorized to employ such staff as may be required. The National Mediation Board and National Railroad Adjustment Board are being directed to render every necessary assistance and make available to you any files, documents, and other papers in their possession having any bearing upon the pending disputes, or upon the methods and procedures for the adjudication of disputes in conference or by the Board.

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

EXHIBIT No. 9

BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN,
ORDER OF RAILWAY CONDUCTORS,
BROTHERHOOD OF RAILROAD TRAINMEN,
SWITCHMEN'S UNION OF NORTH AMERICA,
February 16, 1948.

To: All grand officers and general committees:
Brotherhood of Locomotive Engineers.
Brotherhood of Locomotive Firemen & Enginemen.
Order of Railway Conductors.
Brotherhood of Railroad Trainmen.
Switchmen's Union of North America.

DEAR SIRS AND BROTHERS: The congested condition of the docket of cases now awaiting a hearing before Division 1 of the National Railroad Adjustment Board is a matter of grave concern to our organizations.

Practically, from its inception Division 1 has been unable to keep abreast of the cases referred to it. Repeated efforts by the organizations to correct this situation have been unsuccessful. The records show that decisions in some cases have been delayed for 8 years. These delays have caused great dissatisfaction among our committees and membership.

The railroad managements are in large measure responsible for this deplorable condition. Many managements refuse to recognize decisions of the Board as precedents for the adjustment of identical cases coming under the same rules on the same railroad. Because of this unreasonable position of the railroad managements, general committees have been obliged to forward identical claims to the Board for decision.

At a joint meeting of the general chairman of our organizations in Chicago in 1941, they directed that committees refrain from sending repeater cases to the Board in the future. This action, however, could not be made effective, since the Second World War was declared shortly thereafter.

The docket conditions now existing before Division 1, National Railroad Adjustment Board, suggest that a strict application be given to the action taken in 1941 by the joint general committees of the five transportation brotherhoods. Therefore, the undersigned chief executives of these organizations have agreed that general committees of adjustment and general grievance committees shall hereafter be governed by the following:

(1) General committees of adjustment and general grievance committees shall adhere to the laws of their respective organizations and shall use every reasonable effort to settle legitimate cases arising on their respective railroads, with their managements. When managements decline to adjust legitimate cases that are identical in principle with cases from their respective railroads which have heretofore been determined by decisions of the Board, the general committees of adjustment or the general grievance committees will refrain from sending such cases to the National Railroad Adjustment Board, and upon request from the chairmen of the general committees, officers will be assigned to assist such committees to prosecute such cases. If a settlement cannot be made, they may be included in strike ballots if the issues warrant such action.

(2) When a general committee adjustment or a general grievance committee has exhausted its resources and is unable to adjust a legitimate case the principle of which has not been determined by a Board decision, such case will be referred to the National Railroad Adjustment Board for decision. Committees should not request grand lodge assistance for the handling of cases referred to in this paragraph, and the chief executives will refrain from assigning officers to handle such cases.

Adoption of and literal adherence to the two principles herein outlined will greatly reduce the number of cases to be referred to Division 1 of the Board, and will thereby relieve the Board of much unnecessary work, and permit it to determine cases with less delay than in the past.

All grand officers, chairmen of the general committees of adjustment and general grievance committees, and other representatives authorized to handle such matters for our respective organizations will comply with the foregoing instructions.

Fraternally yours,

A. JOHNSTON,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.
H. W. FRASER,
President, Order of Railway Conductors.
D. B. ROBERTSON,
President, Brotherhood of Locomotive Firemen & Enginemen.
A. F. WHITNEY,
President, Brotherhood of Railroad Trainmen.
A. J. GLOVER,
President, Switchmen's Union of North America.

EXHIBIT No. 10

NATIONAL MEDIATION BOARD,
Washington, February 3, 1955.

Mr. GUY L. BROWN,
Grand Chief Engineer, Brotherhood of Locomotive Engineers,
Cleveland, Ohio.

Mr. H. E. GILBERT,
President, Brotherhood of Locomotive Firemen & Enginemen,
Cleveland, Ohio.

Mr. R. O. HUGHES,
President, Order of Railway Conductors & Brakemen,
Cedar Rapids, Iowa.

Mr. W. P. KENNEDY,
President, Brotherhood of Railroad Trainmen,
Cleveland Ohio.

Mr. W. A. FLEETE,
International President, Switchmen's Union of North America,
Buffalo, N.Y.

GENTLEMEN: At the conference held in this office on January 26 by the members of this Board with Messrs. Brown, Gilbert, Kennedy, and Messrs. Johnson and Blanchard, the latter two representing respectively Mr. Hughes and Mr. Fleete, we emphasized that the problems connected with the orderly disposition of grievances in the railroad industry must be solved. It would serve no useful purpose in this letter to recite the record of the First Division of the NRAB. It is sufficient to say that we share your deep concern about the inability or inadequacy of that tribunal to promptly and fairly adjust grievances submitted thereto by your organizations.

In our efforts to find a solution of this grievance problem, we desire to make it perfectly clear at the outset that our search will not be pursued with a defeatist attitude. We are mindful of the fact that there have been conferences, surveys, studies, and a multitude of suggestions occurring over the past 20 years in an effort to find the proper answers. Despite these efforts, we feel it is our duty to make an affirmative approach by way of proposals to the parties to reestablish a satisfactory method of alleviating the unrest presently existing.

As a first step, we are setting forth below a series of suggestions for your consideration. If, in your opinion, one or more of these suggestions warrant further exploration and study, we shall submit them to the carriers and yourselves jointly, and request that a meeting be held to discuss the proposals and adopt a program looking toward an agreement on a means of procedure to correct the present situation.

Purely as a basis for discussion we submit the following suggestions:

(1) Revise the rules of procedure of the First Division, National Railroad Adjustment Board, to accomplish the following:

(*a*) Limit oral argument to 30 minutes for each side.

(*b*) Limit briefs filed by each side to five pages, unless extended by agreement in unusual cases.

(*c*) Adopt such other procedural revisions as may be agreed upon, to expedite the docketing and handling of submissions.

(2) Adopt a rule that all discipline and discharge (or reinstatement) cases will be heard by the full membership of the Division within 30 days of receipt of the submissions in the office of the Division's executive secretary, unless this time is extended by mutual agreement in exceptional cases.

(3) The Division to agree upon a designated referee who will hear and assist in deciding deadlocked discipline and discharge (or reinstatement) cases. The same referee to be recalled to dispose of all deadlocked discipline and discharge (or reinstatement) cases. All deadlocked discipline and discharge (or reinstatement) cases to be heard by said referee within 60 days of receipt of submission.

(4) As an interim arrangement looking toward an immediate and substantial reduction in the docket of the First Division, a committee of 10—5 each representing the carriers and the organizations, none of them members of the First Division, to be selected to make an immediate review of the entire docket of the Division. Both sides to agree that on any railroad having 25 or more cases pending, they shall be withdrawn from the Board and be placed before a special board of adjustment, the awards of such special boards to be final and binding upon the parties.

The committee above constituted will then survey all remaining cases on the docket of the First Division, and study the practicability of placing them in a limited number of well defined categories. Once a category has been established, a referee will be agreed upon to assist the Board in deciding all deadlocked cases in that category. As subsequent cases of the same nature are received, the same referee will be called in to assist in deciding such cases.

The procedure outlined in the preceding paragraph to be followed in disposing of each additional category of cases established by agreement of the committee described in the first paragraph of this section.

(5) After the initial clearing of the docket and the establishment of agreed upon categories of cases, all incoming submissions to be allocated to the proper categories by the executive secretary of the Division.

(6) As a further aid to expedite the handling of cases coming before the First Division, this Board suggests the consideration of the creation of 10 positions to be designated examiners—National Railroad Adjustment Board, these examiners to be civil service employees of the U.S. Government, with their rates of pay and qualifications to be established by the U.S. Civil Service Commission. These positions would be filled after competitive civil service examinations through appointment by the U.S. Civil Service Commission. Their duties would be generally as follows:

(*a*) Analyze, investigate, and thereafter prepare a report and recommendations to the several divisions of the NRAB on all cases docketed. The recommendations would thereafter be acted upon by the Division and should deadlock occur procedure would follow present provisions of section 3 of the Railway Labor Act, as modified by any agreement between the carriers and organizations resulting from these suggestions.

After the establishment of a register of eligibles by the Civil Service Commission, 10 appointments would be made, for assignment as follows: 6 with the First Division, 2 with each panel; 2 with the Second Division; 2 with the Third Division.

The assignment of the individual examiners to the first three divisions to be determined from time to time by action of the full membership of the NRAB. Assignment of examiners to cases coming before the Fourth Division to be made from the pool of 10 examiners as required.

As stated previously, these suggestions of this Board are being presented to you for the purpose of your exploration and study. If you think it desirable, the Board would be glad to discuss them with you in person before presenting them to the carriers and yourselves jointly, with the request that a joint meeting of representatives of both sides give them serious consideration and discussion.

Very truly yours,

FRANCIS A. O'NEILL, Jr., *Chairman.*

cc: W. D. Johnson, Vice President, Order of Railway Conductors & Brakemen, Washington, D.C.

EXHIBIT No. 11

NATIONAL RAILROAD ADJUSTMENT BOARD,
FIRST DIVISION,
February 18, 1955.

Mr. GUY L. BROWN,
Grand Chief Engineer, Brotherhood of Locomotive Engineers,
Cleveland, Ohio.

Mr. H. E. GILBERT,
President, Brotherhood of Locomotive Firemen & Enginemen,
Cleveland, Ohio.

Mr. R. O. HUGHES,
President, Order of Railway Conductors & Brakemen,
Cedar Rapids, Iowa.

Mr. W. P. KENNEDY,
President, Brotherhood of Railroad Trainmen,
Cleveland, Ohio.

Mr. W. A. FLEETE,
International President, Switchmen's Union of North America,
Buffalo, N.Y.

DEAR SIRS AND BROTHERS: With reference to joint communication dated February 3, 1955, addressed to you over the signature of Mr. Francis A. O'Neill, Jr.,

Chairman, National Mediation Board, wherein he submits for your consideration several proposals intended to improve upon the conditions existing on the first division as complained of to you at our meeting held here in our board room on January 10.

We have jointly reviewed and studied these several proposals and the following will convey to you our considered opinions and views with respect thereto:

Item 1. (*a*) Limit oral argument to 30 minutes for each side.

(*b*) Limit briefs filed by each side to five pages, unless extended by agreement in unusual cases.

Agreement upon these two items would have to be contingent upon the carrier members' willingness to get into harness and settle claims on the basis of their merits without referee assistance and, then in cases where we have our legitimate differences of opinion and the case must be referred to a referee, we could agree upon some kind of a limitation as suggested.

However, if there is to be no change in the current carrier members' disposition to take every case to a referee, then we would not be agreeable to subscribing to any form of limitations in our presentations to the referees.

(*c*) Adopt such other procedural revisions as may be agreed upon to expedite docketing and handling of submissions.

As regards the matter of docketing, we wish to point out that any delay suffered here is not a responsibility of the Division. Submissions are received and, after the parties have complied with all of the requirements, they receive their number and are placed upon the calendar.

As to expediting the handling of submissions after they are placed on the calendar, we make the following suggestion:

Agree that where a submission contains no reference to a jurisdictional dispute between the parties, it cannot be injected into the case after being placed on the calendar.

This also to apply where the parties make no reference to a dispute on such questions as "subsequent date claims," "no penalty provided for in the rule," and "request for a deduction of earnings made in outside employment."

The injecting of these questions by the carrier members in practically every case handled has resulted in a tremendous amount of time in brief and argument, particularly on the question of "deductions" where discussions before the referee last from 3 to 5 days on this subject alone.

Item 2. This suggestion, if adopted would have to be restricted in dismissal cases where the man is out of service and not on the payroll.

We could not consider giving preferential handling to the mine run of discipline cases such as removal of demerits, reprimands, or short suspension periods. These cases are now handled along with other contractual violations.

Item 3. This deals with the appointment of a permanent referee to hear and decide dismissal cases. To this we would be agreeable provided that the Division itself will agree upon the appointee. Under no consideration would we agree to let the National Mediation Board make such a permanent appointment in event we ourselves disagree upon the man.

However, we call your attention to the fact that the Division is now handling dismissal cases currently and it is our considered opinion that we should not call in a referee to decide one or two cases, nor should we allow such cases to be held pending the receipt of additional cases to build up a list of cases for such permanent referee.

Item 4. This item deals with the suggestion of appointment of a committee of 10 men, 5 from the carriers and 5 from the organizations to make a review of the entire First Division dockets with a view of having system boards set up on all carriers where there are 25 or more cases on hand from an individual railroad.

To this we are agreeable but, we wish to point out, this would require but only about 2 or 3 days work since this is a determination that can be readily ascertained from our calendar which gives a showing of each railroad, the number of cases from that road, as well as the organization involved.

As to the second paragraph of this item, setting the cases up in categories, this suggestion is not at all feasible. There are so many different sets of categories that there would have to be a combination of them, else assign 200 referees.

Item 5. The Executive Secretary of the Division is not qualified to review cases and place them in their proper categories, and that immediately dismisses this suggestion.

Item 6. This suggests the creation of 10 positions to be known as examiners.

CONCLUSIONS

No one is better qualified to analyze, investigate, and make recommendations on cases before this Division than the 10 regularly constituted members now assigned here. Therefore, this item suggests nothing but an added expense that is not justified.

We fail to see where any of the suggestions offered in Mr. O'Neill's letter will bring about the desired results. We firmly believe that our present setup cannot be substituted with any system that will serve as well as what we have now, provided, that the carrier members will get themselves off center and start to function as the Railway Labor Act contemplated when it was passed.

We reiterate, that no one is more qualified to pass upon the matters presented here than the current members of the Division. They have served their employers for many years in their present field of endeavor; know the rules as they apply to a particular case as well as related awards; know their merits following a review of the case and, finally, whether or not the claim should be sustained or denied.

There is nothing wrong with the First Division that cannot be corrected within the Division itself, as we have previously stated to you, if the carrier members will cease and desist from referring every claim to a referee that they sincerely know should be sustained. As for the labor members, the number of awards rendered without referee aassistance speakes for itself, there being by far more of such awards rendered than those allowed by the carrier members without referee assistance.

Coupled with the foregoing statement we feel that there must be also greater cooperation from our various general committees and committees of adjusment to the end that they will not refer to this Board those cases which they know cannot be sustained. Sending cases to this Division just to get them off the property when it is known they are without merit should be discontinued. Sending such cases here results only in denial awards to be used against us to convince referees that we make ridiculous claims just to hope that some referee will be simple enough to sustain them. It is difficult enough now to get a favorite to pay off without playing "long shots" that never come in.

We are of the opinion that our entire problem will best be improved upon if the foregoing expressions are made a reality and if and when we get down to handling cases on such a basis we will function to the satisfaction of all concerned.

Fraternally yours,

C. W. KEALEY,
Assistant Grand Chief Engineer, Brotherhood of Locomotive Engineers.
DON A. MILLER,
Vice President, Brotherhood of Locomotive Firemen and Engineers.
J. H. HINKS,
Vice President, Order of Railway Conductors and Brakemen.
B. W. FERN,
Vice President, Brotherhood of Railroad Trainmen.
C. E. MCDANIELS,
International Vice President, Switchmen's Union of North America.

EXHIBIT No. 12

NATIONAL RAILROAD ADJUSTMENT BOARD,
FIRST DIVISION,
July 31, 1963.

Hon. JOHN BELL WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN WILLIAMS: Under date of July 12, 1963, you wrote to Mr. Francis A. O'Neill of the National Mediation Board, concerning inquiries received by you from railroad employees in connection with "extreme delays encountered by them in obtaining settlement under the Railway Labor Act of disputes arising out of interpretation and application of agreements between the railroads and

the unions representing the employees," your letter asking for reply to eight questions propounded by you.

On July 17, Mr. O'Neill wrote you saying that he asked Chairman J. B. Zink, of the National Railroad Adjustment Board in Chicago, to furnish you with the desired information.

The National Railroad Adjustment Board consists of four Divisions, each authorized by section 3, first (h) of the Railway Labor Act, as amended, to have jurisdiction over disputes from employees in the craft or class assigned to them, respectively. The First Division has "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."

Mr. Zink has called upon the First Division to prepare its portion of the reply to be sent to you and the information will then, presumably, be consolidated with similar data received from the other three Divisions of the NRAB.

The undersigned author of this letter is the representative of the Brotherhood of Railroad Trainmen on the First Division, NRAB, with offices in room 1311, 39 South LaSalle Street, Chicago, Ill., 60603. Time being of the essence, and the existing conditions on the First Division being so rotten and deplorable, I am compelled to compile my own "true and accurate" report taken from the records of the Executive Secretary of this Division. The figures given reflect the actual production during the period covered and cannot, therefore, be disputed by any carrier member of this Division.

The information you desire requires more than just figures. A full and complete explanation must accompany these figures to show the causes for our miserable and shameful record of productivity. While the carrier members of this Division cannot shy away from the factual record, I know them well enough to predict that they will subscribe to no instrument that will serve to indict them in the eyes of Congress. Hence, you can expect a long delay in receiving from this Division a report signed by the carrier members that will convey to you the factual situation as it now obtains, and the causes therefor.

I have long been crusading for an improvement in our functions. Several years ago when Mr. Daniel P. Loomis, now president of the Association of American Railroads, was in charge of the Association of Western Railways, I had lunch with him at the Chicago Athletic Club, together with Mr. G. J. Willingham, president of the Peoria & Pekin Union Railroad. Mr. Willingham had arranged for this luncheon and at that time I gave Mr. Loomis a full report on our functions and asked him if he would not use his good offices to bring about an improvement in the attitude of the carrier members here. My pleadings were of no avail because he did nothing and nothing was ever done. In fact, conditions continued to grow worse. In support of this assertion that things continued to grow worse, I am also attaching a copy of my letter addressed to the five carrier members on this Division under date of April 5, 1962, which is self-explanatory.

This report would not be complete without my handing you two other recent reports passing over my desk. One deals with the salaries and expenses paid to First Division referees during the fiscal year 1963. A total of $30,762.07 was paid to 6 referees to decide 112 cases, at a cost of $274.66 plus, per case. This does not include other costs such as rent, salaries, etc., in the administration of the Division. Had the Division been functioning as it should, at least 85 percent of these 112 cases could have, undoubtedly, been disposed of without the aid of a referee by following precedent awards of long standing.

Next is the report of the recommendations by the Estimates and Appropriations and Disbursements Committee, wherein it will be noted that we have reached the point to where it is anticipated that it will take in excess of $1 million of the taxpayers' money to keep this burlesque show running for the fiscal year 1965. It is interesting to note that this figure is approximately $200,000 more than the 2 previous fiscal years, which is self-evident that the less we do, the more money it takes to make it worse. Considering our past performance, no improvement is in sight so, the Bureau of the Budget is to be asked for $1 million to keep in motion for the fiscal year 1965 one of the most disgraceful agencies of the Government.

Yours very truly,

B. W. FERN,
Labor Member, First Division, NRAB,
Representing the Brotherhood of Railroad Trainmen.

CC: Francis A. O'Neill, Jr., National Mediation Board; Charles Luna, President, Brotherhood of Railroad Trainmen; A. H. Chesser, N.L.R., Brotherhood of Railroad Trainmen; J. B. Zink, Chairman, NRAB; Carrier Members, First Division; Labor Members, First Division.

APRIL 5, 1962.

Messrs. H. J. Reeser.
H. W. Burtness.
E. T. Horsley.
H. V. Bordwell.
J. E. Carlisle.
Carrier members, First Division, National Railroad Adjustment Board.

GENTLEMEN: I am attaching, hereto, some very illuminating statistics from an analysis of case handling by my office during the period July 11, 1952, to April 1, 1962, from Award No. 15991 to Award No. 20093.

It will be noted that during the approximate 10-year period covered by this analysis, my office recognized our responsibility by writing out a total of 929 dockets and handed to the referees a total of 613 dockets wherein no briefs were prepared and where we either stood on the record or, by agreement with the carrier members, furnished the referee prepared findings either denying or dismissing the claim, making a grand total of 1,542 dockets.

During this same period it will be noted 21 dockets were sustained by 3 carrier members, without the aid of a referee. I say three carrier members, because during this 10-year period neither Mr. Reeser nor Mr. Burtness ever agreed to sustain a single claim on their own, forcing us to take every docket assigned to those two carrier members to a referee for an award.

The performance on the part of the carrier members during the period covered by this analysis is nothing short of a disgrace. However, I fully appreciate the fact that no matter what I might say here will have any effect on any of you gentlemen, because my past experience has been that no amount of degrading will change the situation. You are all prone to criticism and when criticized over your performance as members of this governmental agency, it runs off of your backs like water off a duck.

It shall be my continued purpose to maintain an accurate record of our functioning as an adjustment board in the hopes that some day, in the not-too-far-distant future, we will have immediately available for someone in Government circles an on-the-spot account of just how putrid the performance of the carrier members really is. In the meantime, since you gentlemen insist that every docket must be passed upon by a referee, I will be powerless during the year 1962, to prevent you from making this year one of the worst in productivity in the 28 years of our existence.

B. W. FERN, *Labor Member.*

CC: Members, National Mediation Board.

Analysis of case handling by the office of Mr. B. W. Fern during his tenure of office on the First Division of the National Railroad Adjustment Board, July 11, 1952, to April 1, 1962, award No. 15591 to award No. 20093

Without the aid of a referee:	
Denied	793
Dismissed	113
Other	23
Total	929
With the aid of a referee:	
Dockets briefed and argued	(263)
Dockets not briefed, standing on the record, or prepared findings denying or dismissing the claim	613
Total	1,542
Dockets paid by carrier members during same period	21
Total dockets handled by the division during same period, excluding 248 supplemental board awards	4,255
Total trainmen dockets handled	1,561
Balance to the other 4 organizations this period	2,694
Trainmen's percentage record	36.7

Reply to eight questions propounded by Hon. John Bell Williams, Member of Congress, chairman, Subcommittee on Transportation and Aeronautics, Washington, D.C., in his letter of July 12, 1963, addressed to Hon. Francis A. O'Neill, Jr., National Mediation Board, Washington, D.C., re status of case handling and productivity of the divisions, NRAB, prepared by Brotherhood of Railroad Trainmen's representative, B. W. Fern, on the First Division, National Railroad Adjustment Board, Chicago, Ill.:

NOTE.—Congressman Williams' inquiry addresses itself to conditions on all four divisions of the NRAB. This reply covers the situation on the First Division only and is being prepared separate and apart from one said to be in process of compilation by a two-man committee appointed for the purpose. It is being so handled because of a sincere belief that conditions on the First Division warrant separate treatment in sufficient detail to acquaint the Congressman and his committee thereof.

Question No. 1 relates to this statement, second paragraph of the July 12, 1963, letter:

"I understand that in many cases it takes 5 or more years—sometimes as much as 10 years—to obtain a decision on the merits where such a dispute arises, except in cases involving discharge or suspension of the employee, in which case as much as a year or more may elapse."

The question itself reads:

"1. Are there in fact delays of the type I have mentioned above?"

The answer to this question must be preceded by an explanation of our procedures in handling mine run time claims, as contrasted with disputes involving claims for restoration to service of dismissed employees. The First Division gives expedited handling to all reinstatement cases—those where an employee is out of service pending our decision. They are processed ahead of other disputes to be handled with the first batch of cases in line therefor, as soon after being docketed as possible.

Mine run time claims (including disciplinary disputes where the man is not being withheld from service) are handled in the order in which they have been docketed, the oldest ones being first out for next handling.

Thus, a case involving reinstatement to service will be handled with the first group of miscellaneous dockets being taken up after docketing of the reinstatement case, even though the latter may have been docketed within the month or slightly longer, whereas the others, being taken in order, may have waited on the list for 5 or 6 years.

Before making direct reply to the specific question, we must point out the distinction between the date of the claim or dispute in a given case and its docketing date here at the Division. A dispute arises on the property with reference to an occurrence on a given date, say August 10, 1953. Under our schedule agreements, such claims or disputes are initiated at the local level and then must be processed on the property in conformity with procedural requirements, in successive steps up the ladder, until handled between the highest designated representatives of both sides, in correspondence and conference. If, after exhausting all avenues of settlement the parties are still in dispute, the agreement usually contains a time limit in which the case may be submitted to the First Division (or competent tribunal such as a special board of adjustment on the property involved) for decision.

On the average, it may be said this processing of the case on the property takes approximately 2 years; when the submissions of both parties have been filed with us, the case is "docketed," i.e., given a docket number and placed upon our working calendar as of the date it is docketed, and, in the case of our hypothetical dispute, this would probably be in the latter part of 1955, or early in 1956. The dispute would be about 2½ to 3 years old by the time it is docketed. This reply will deal in the age of dockets as of the date submitted to us and docketed, not with the date of the claim. Obviously, the Division can only be held to account for the delay in deciding the case which occurs after it has been filed with us, and not for the time consumed in progressing it in the usual manner on the property.

The average age of cases decided by the Division at this time, calculated from the date of docketing in the manner described next above, is reflected by these figures, taken directly from our records:

First, we have checked 66 dockets which have been deadlocked, a referee appointed to decide them, and which are at this date in line to be decided next,

although not actually decided: 43 of them are miscellaneous time claims, and the average age of all is 7 years and 7 months; 23 are discipline cases which have been expedited, and the average age of these dockets is 11 months.

Second, we have checked the 94 awards rendered since January 1, 1963, and their age, being the lapse of time from the date docketed until the date actually decided, is:

Miscellaneous time claims decided: 70, the average of which, from time docketed here until the decision was rendered, 6 years and 7 months, plus.

Reinstatement cases, which are expedited: 24 decided, average age of the cases, 11 months.

The range in time on the cases reported above, is: miscellaneous time claims: the fastest disposition was 58 months (4 years and 10 months); the longest lag, 8 years and 11 months. Reinstatement cases: one decided within 1 month and another in 2 months after being docketed; the longest lag, 21 months, or 1 year and 9 months.

Summing up, these figures show that although the last 94 cases decided averaged 6 years and 7 months old for time claims and 11 months for reinstatement cases, the cases now pending before referees and next out for decision, average 7 years and 7 months for time claims and 11 months for reinstatement cases.

The reason why the average of pending time claims has increased by 1 year is the fact that the productivity of the First Division has reached an alltime low. During the first full 10 years of operation, the First Division decided almost 1,000 cases per year and about two-thirds of them were decided without referee assistance. In the year 1961, this Board decided only 322 cases; in the year 1962, we reached our record low—deciding only 163 cases for the entire year. Thus far this year, as of the end of July, we have decided only 94 cases for the 7 months—averaging a little better than 13 per month. Bearing in mind that the Division has not yet had its vacation period (3 weeks) nor the Christmas-New Year holidays, which will mean at least 1 month's productivity lost, it is obvious we will probably decide less than 150 cases for the entire year 1963—barring some stimulant being applied in the interim, which is a remote possibility.

In conclusion on question No. 1, it is established by the records here that dockets take 1 year longer to reach decision than they did a year ago and every indication is this lag will grow worse; there is no immediate prospect for improvement. If this prediction is realized, we may anticipate dockets laying here for 9 years or more, in the very near future, before reaching a decision.

Question No. 2: Are these delays general, covering all cases or are they isolated instances?

Answer: What we have said in answer to question No. 1 is equally applicable to all pending dockets in the respective groups—miscellaneous time claims and reinstatement cases. For example, we still have pending a handful of cases docketed in 1954 and after them, more than 100 which were docketed in 1955. Just these cases, plus reinstatement cases, which stand to be expedited and handled at about the same time, comprise better than a year's output at the present rate and they are not even deadlocked to a referee as yet. They probably won't be for a year or more which means they will then be 9 and 10 years old and possibly 6 months away from reaching decision. After them, of course, come the hundreds filed each year, in 1956, 1957, etc., which will be covered when we discuss the pending backlog.

Question No. 3: Is there a large backlog of cases of this type?

Answer: The backlog as of June 30, 1963, totals 3,793 cases. The size of it is best illustrated by thinking in terms of length of time to dispose of it at the present rate on the First Division. We have shown the Division decided 163 cases in 1962 and, projecting the existing pace to the end of 1963, approximately 140 will be disposed of this year. Averaging the two figures gives us a pace of 150 per year and, if we do not continue to slow down, and if the backlog does not continue to increase, this means it would take the First Division 25 years to decide the cases now pending. Absent some stimulating force, nothing of the sort will occur because (1) the pace continues to slow down and (2) the backlog continues to grow.

Question No. 4 (first part): If there is a backlog, is that backlog increasing or decreasing?

Answer: The best source for the answer to this question is the Case Load Report of the First Division. To make our reply truly reflective of the trend

for a sufficient period of time to establish just what it is, we are listing figures for the years from 1957 to June 30, 1963: These are taken from a report prepared as of March 1, 1963, to which we will append the final figure as of June 30, 1963.

We have taken figures to present two pictures: the steady growth of the backlog on a monthly basis, which is illustrated by the fact that more cases are docketed than decided each month. The left hand and center columns cover this and the months reported are representative of the rest, this being attested to by the steady growth of backlog on an annual basis. The column of figures on the right hand show the steady increase in the backlog, annually.

	Cases docketed	Cases decided	Backlog
February 1957	78	52	2,368
February 1958	28	43	2,380
February 1959	106	45	2,900
February 1960	58	23	3,060
February 1961	57	14	2,815
February 1962	74	16	3,092
February 1963	64	17	3,698
June 1963	46	18	3,793

The table covers the period of 7 years and 4 months from February 1957 to June 30, 1963. It shows an increase in our caseload (backlog) of approximately 200 per year, and this, in turn, is greater than our yearly output of decided cases in 1962 and very likely to be in excess of what we dispose of in 1963, by some 60 or more.

Question No. 4 (second part): Is it likely that present trends will continue?

Answer: Yes. Our reply to part 1 was prepared in anticipation of part 2. We have covered a 7-year period to prove the lasting nature of the trend. For example, the average total number of cases docketed is seen to be 64 plus; the average total number of cases decided is shown to be only 28 plus, which means there is bound to be an increase in the backlog of undecided cases. This is borne out by the figures for the last month reported, June 1963: Forty-six cases were docketed whereas only 18 were disposed of—13 being decided and 5 withdrawn by the parties before an award was made. The increase in our backlog for the month of June 1963 is, therefore, 28 cases which is more than twice the number we decided during that month.

We do not believe it is necessary to make any comment as to the picture these statistics portray with reference to the deplorable conditions now prevailing and, incredible as it may seem, getting worse by the day.

Question No. 5 (pt. 1): If there is a backlog of cases, and if delays are general, is there an appropriate framework in the law for eliminating the backlog and delays?

Answer: This part of the question must be taken in two parts. The first will have to do with application of the Railway Labor Act, as amended, to eliminate the backlog. The answer to it is there are provisions but there is evidence they would be ineffective if invoked. The backlog could be set aside for disposition by supplemental board, or boards, under section 3, first (w) of the act as was done by the First Division during the period October 1949 to March 31, 1953, when two supplemental boards functioned as well as the regular Board. Too, the backlog could be substantially reduced, if not totally eliminated, by establishment of special, or system boards of adjustment by agreement between the several railroads and representatives of the organizations affected, under section 3, second of the act. This provision is watered down to the point of being virtually ineffective, in its present form, in that it requires mutual agreement between the parties for establishment of a special board of adjustment on a given carrier. Efforts to eliminate (1) part of the pending backlog, and/or (2) probability of increasing its size, by setting up such boards, have been frustrated by refusal of some of the railroads involved to participate.

The feasibility of establishing one or more supplemental boards to function concurrently with the First Division, regular Board, for the purpose of reducing or eliminating the backlog, is somewhat dubious in view of the performance record of the prior boards. When the First Division established two supple-

mental boards, which commenced to function in October 1949, there was a pending backlog of 3,865 cases. The three boards labored together from then to March 31, 1953, when the two supplemental boards were discontinued and the backlog of cases as of February 1953 was 3,659, which reflects a reduction of 206 from the October 1949 total.

The reason for this negligible result may be explained by these figures: During 13 full years of operation, 1935 through 1948 (excluding the year 1946 during which the Division did not function fully), the former regular board disposed of 12,367 disputes, averaging 951 per year. The three boards of the First Division (regular board and two supplemental boards) functioned 3 full years—1950, 1951, and 1952. During those 3 years, all three boards combined, disposed of 2,775 cases, averaging only 925 per year, which is 26 cases a year less than the former Board, working alone, had averaged over a 13-year period.

Based on these results, it would not appear that the provisions now existing under the Railway Labor Act, as amended, lend assurance that acting within their framework will reduce or eliminate the backlog.

The second question raised in part 1, question No. 5, may be stated in this way: "Is there an appropriate framework in the law for eliminating the delays?"

The answer is "No." But the answer must be accompanied by some explanation.

The reader must understand beforehand the reason for the delay in processing cases on the First Division and what we have to say here on that subject is confined (unless otherwise expressly indicated) to a comparison of case-handling methods by the First Division representative of the Brotherhood of Railroad Trainmen with that of the five carrier members.

The delay in deciding cases, which has resulted in accumulating the backlog, is the result of having a substantial percentage of them decided by a neutral (referee) appointed by the mediation board and a fair appraisal of this situation requires us to consider whether the Division is justified in so doing.

First, we must take cognizance of the purposes and intendments of the Congress when the Railway Labor Act was formulated, with particular reference to respective representatives to be appointed as members of the four divisions. It was anticipated that both sides would select men from their ranks, highly qualified in the meaning and application of the long-existing collectively bargained agreements and these men were to assume the roles of judges. They were, in effect, to comprise the "supreme court" for disputes over which they had jurisdiction, as spelled out in section 3, first (i) of the act; they were expected to approach each dispute with an open mind for the purpose of applying their wealth of background knowledge, experience, and practical familiarity with railroad operations in a manner resulting in fairly deciding it on the merits. If the particular claim was valid, a sustaining decision would result; if the rules, applied to the facts, in the light of the record as a whole, indicated lack of merit, the claim would be denied. If the members functioned in this manner, obviously, they would decide all disputes submitted except those where there was an honest difference of opinion on the merits.

What we have said is supported by decisions of the U.S. Supreme Court and other high State and Federal courts.

In *Slocum* v. *D.L. & W. R.R. Co.* (339 U.S. 239, 70 S. Ct., 577), the U.S. Supreme Court, speaking through Mr. Justice Black, said in its opinion:

"* * * The Adjustment Board is well equipped to exercise its congressionally imposed functions. Its members understood railroad problems and speak the railroad jargon. Long and varied experience have added to the Board's initial qualifications. Precedents established by it, while not necessarily binding, provide opportunities for a desirable degree of uniformity in the interpretation of agreements throughout the Nation's railway system."

A dispute arose between the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America on the Delaware, Lackawanna & Western Railroad over rights to certain work and a suit was filed in the New York Court of Appeals which rendered an opinion, dated January 24, 1952, holding, in part:

"* * * In enacting the statute, Congress determined that, if decisions are to be made upon basic questions of railroad-employee relations, they must be made, if at all, by the designated agency 'peculiarly competent' to decide them; that, if disputes arise as to the meaning, application, or scope of agreements between railroads and unions involving labor relations, they must be read and construed, in the light of usage, practice, and custom, by the designated body most familiar with them. * * *"

In *Isgett* v. *Atlantic Coast Line Railroad Company*, South Carolina Supreme Court (22 Labor Cases 67,390) held a trial court was without jurisdiction in a suit for restoration of seniority rights and time loss damages, saying:

"Sound congressional reason for the rule here applied, as stated in the opinions in the *Slocum* and *Southern Railway* cases, is the goal of uniformity in the interpretation of collective bargaining agreements between the carriers and their employees, which should result from exclusive primary jurisdiction of the Adjustment Board created by the Railway Labor Act, and the consequent avoidance of unnecessary causes of friction in labor relations. This is illustrated by the case at bar. If the Court should undertake to now decide the controversy, it would not bind the Board, to which the next similar controversy might be taken. It would seem that the presently firmly established rule of exclusive primary jurisdiction of the Board in such cases should be beneficial, in the long run, to both carriers and employees, and to the public. * * *"

There are many, many more decisions expressing these same thoughts.

In practical operation, we find the division called upon to function in this atmosphere:

The rules in effect on the major carriers are, in large part, standardized as the result of handling on a national basis for many years or because of having a common source, which, in turn, resulted in making a given rule or set of rules, effective on a virtually national basis. For example, when the Hours of Service Act was passed by the Congress in 1907 to become effective in 1908, a joint committee representing the Nation's major carriers and the operating brotherhoods negotiated a rule which was placed in their respective agreements of the participating railroads, verbatim. Similarly, when the Adamson 8-hour law was passed in 1916, a joint commission was established to negotiate changes in existing agreements to accommodate the rules to the new legislation. When the operation of the Nation's railroad was taken over by the Director General of the Railroads for the duration of the First World War, a number of rules changes were promolgated and ordered into effect on all carriers under Government control. The result has been to make, and continue in effect, the basic rules of agreement which are currently in the agreements on most of the Nation's carriers giving these particular contracts a national uniformity not found in many other industries.

Along with this common background of inception, the railroad industry has had uniformity of interpretation and application of the rules by establishment of tribunals, on a national or regional basis, for that purpose, since shortly after the turn of the century. When the First Division commenced functioning in October 1934, these predecessor Boards had rendered decisions interpreting the very rules involved, in approximately 15,000 cases—many of the decisions having been made by members of the committees which had negotiated the rules in the first instance. We refer to the decisions of Railway Board of Adjustment No. 1, U.S. Railroad Labor Board; the Regional Boards of Adjustment established under the Railway Labor Act of 1926.

The members of the First Division, as originally constituted, took up their duties fully aware of this situation and, naturally, applied the precedent to be found in the prior decisions to similar disputes whereby approximately two-thirds of the cases disposed of from 1934 through 1945 (a grand total of 10,927) were settled without referee assistance. Adding these to the prior totals, means that in 1946, the First Division had in excess of 26,000 prior decisions for guidance (including nearly 11,000 of its own) which certainly should have been applied in similar facts involving the same or similar rules, to properly dispose of the case at hand.

At the present writing, the First Division has rendered a total of 20,323 awards, making in excess of 35,000 prior decisions involving substantially the same rules which have been in effect with little change for many years—some of them being more than half a century old. Obviously, the varieties of claims which can possibly arise under the rules have limits so that it is almost impossible for a dispute to arise today, involving interpretation and application of these rules which has not been decided from a half a dozen to 100 times in the past. Often there are several decisions involving the same parties and the same identical rule.

We say these prior interpretations illustrating proper application of the rules should be followed in cases presented to us today; i.e., that the weight of authority as found in prior decisions is controlling, absent a showing of clear error therein.

In establishing the cause of the admitted delays, it is necessary to determine whether the members of the Division are functioning to decide cases within their presumed understanding and ability and if not, where the fault lies. Awards of the Division are made effective by a vote of a majority. Before we can render an award either way, at least 6 out of the 10 members must vote in favor of the particular decision. If the case has been submitted to a referee, there are 11 votes—his and those of the 10 members; so 6 are necessary. From what we have shown here, it is readily apparent that one can ascertain if the respective members are functioning as such, by reviewing the awards for the purpose of determining: (1) How many are made without referee; (2) how many have been sustained, and how many have been denied; and (3) how many of those made by referees cover cases similar or identical to those which have previously been decided a number of times.

For our purposes here, we will confine our attention to the awards made without referee because they are concerete evidence the members of the Division met their duty and obligation to decide the issues. In cases where the claim was denied without a referee, it means that the labor members recognized it was without merit under application of the rule to the facts and in the light of our prior decisions; where the claim was sustained, it means the carrier members similarly functioned in recognition of a valid claim. Again emphasizing that comments here made are confined to comparing the conduct of the trainmen's representative with that of the carrier members, we have this picture of performance for the 4-year period, 1958 through 1961:

Year	Referee	No referee	Total rendered
1958	255	202	457
1959	276	90	366
1960	231	135	366
1961	209	113	322
Total	971	540	1,511

Of the 540 cases decided by the Division without a refereee, 352 were trainmen's cases.

During this same period of time, the carrier members agreed to pay only seven claims. In closing on this subject, it is a matter of record that during the more than 11 years the present trainmen's representative has served as a member of the First Division, he has agreed to a denial of more than 900 claims, shown to be invalid in the light of the controlling weight of authority of our prior decisions. During that entire period—from July 15, 1952, to June 30, 1963, the carrier members have agreed to pay a total of just 22 claims. On these figures, we say the trainmen's representative has met his obligations and functioned as such, more than 900 times; the carrier members have responded, over an 11 year period, a total of just 22 times. This means that in all cases except those 22, if the trainmen's representative believed a given case had merit, it was necessary to handle it before a referee and persuade him to sustain it, if possible.

This is the crux of the whole situation with reference to what is causing the delay and has built up the backlog. In illustrating the sort of case handling involved in preparing a dispute for presentation to refereees, we will give one example as pertains to each of the five carrier members, individually.

A. At the time the dispute covered by award No. 19372 was submitted to us, this Division had previously decided 16 similar cases involving the same parties and the same rule. Nevertheless, we were forced to spend some 2 weeks in briefing the case for referee, followed by a half a day of oral argument in order to obtain a sustaining award, which became No. 17 in the chain. Then, 2 years later, No. 18 was submitted. The same carrier member handled it as had handled No. 17 (award 19372); he refused to follow the other 17 decisions, and again we were forced to prepare written brief and argue the case as though the first time the question had arisen. Fortunately, the referee followed the prior decisions, sustaining the claim in award No. 20077.

B. Down through the years, the First Division had recognized its inability to resolve cases involving conflicting medical opinion and, where this was shown, had returned decisions ordering the parties to establish a three-doctor medical board for the purpose, with appropriate holdings on the question of compensa-

tion due the employee, if improperly withheld from service. As of the time the case resulting in award No. 20019 was decided (October 3, 1961) the Division had so held on its own motion, 35 times, and with referee assistance, some 40 other times. There was no money coming to the man in award No. 20019, and the carrier member subscribed to application of the controlling principles, resulting in the award being rendered by the Division without referee. Two months later we took up another case, involving the same identical principles from the same railroad, but because the man there was entitled to payment, the carrier member would not follow our prior awards, even though we had just rendered an award on the issues. The work necessary to properly prepare that case for the referee spanned 7 weeks, plus nearly a day of oral argument, and again we were fortunate the referee was not led astray—he sustained the claim in award No. 20093.

C. A case now pending for referee decision involves two rules; one of them has been in effect since 1910, the other since 1911. The first one is specifically applicable to circus train service, and restricted by its terms to men doing that work; the second, expressly limits its application to men "in pool or irregular freight service." The carrier is in obvious violation by attempting to make application of the latter rule to a crew performing circus train work exclusively. The carrier member will not pay the claim which means we were compelled to brief the case for referee, necessitating more than 3 weeks' work in developing the history of these two venerable rules and related decisions, in sufficient detail to inform a referee of the justness of the claim and prevent, if possible, rendition of an erroneous award, applying the "pool or irregular freight service" rule to a crew in circus train service.

D. In November 1959 we were confronted with a time claim under a rule specifically providing it was valid and payable if not declined by the carrier, in writing, within 30 days. The record showed without dispute, that the carrier had not complied within the time limit, and, obviously, the claim was valid as made. In a spirit of fairness, we discussed this with the carrier member handling it, offering to reduce the claim from 40 runaround payments to the 13 which the record showed were involved, even though the claim for 40 was valid under a literal application of the controlling rule. The carrier member refused to agree to an award paying 1 red cent and we were forced to spend several days preparing a brief to prove the same carrier had contended for such compliance with the time limit rule when to do so meant a denial award. Again we were lucky, the referee sustained the claim in award No. 19343.

E. The case involving this particular carrier member shows why we feel fortunate when we have been able to present sufficient evidence to convince a referee a claim is valid. In award No. 17088, we had a claim where it was contended by the carrier, that it could use and compensate a yardman, working as an individual under a special agreement, under a rule specifically applicable to crews, as contrasted with an individual. Although we were able to show that the same carrier member had himself, vigorously opposed applying a "crew" rule to an individual in a former case, the referee disregarded all the evidence and denied the just claim. We prepared a dissent from that award to prove its many errors.

From these brief sketches, it can be seen that refusal by the carrier members to pay just claims is a prime cause of delay in processing our dockets. It must be remembered that the referees assigned by the Mediation Board cannot have any prior railroad background—they must be neutrals. Our rules have a tremendous background in history and precedent; many of them are extremely difficult for someone outside the industry to properly understand. So, if we have a just claim which the carrier members will not agree to pay, we must do what we can to fully acquaint the referee with all the evidence, including possibly 50 to a hundred or more prior decisions. Then, sometimes we fail to persuade the referee to a sustaining award and are compelled to write a dissent in order to protect the rule or rules, and to limit the damage to the one decision. In other cases, we will prevail and the carrier members will dissent, endeavoring to detract from the soundness of the award. This means we must prepare a supporting opinion to protect it. All of this takes a great deal of time and while dissents or supporting opinions are being prepared, we cannot get other cases ready for referees.

This reply has been lengthy but, we hope, not unduly so. The reader will appreciate the necessity for information along the lines covered herein, in order

to grasp why there is a delay in handling cases on the First Division which has no remedy within the framework of the act.

Question No. 5: (Pt. 3) "If so, why has that machinery not been used?"

We have illustrated how provisions of the act have been invoked in an effort to cut into the backlog in the past and referred to other efforts which cannot be implemented unless the carrier will agree to employ them. In addition to this, the Trainmen's representative on the First Division has repeatedly offered to enter into equitable arrangements which, if met in good part by the carrier members or those to whom they are responsible, would effectively dispose of every pending Trainmen's case on this Board (some 1,326 at this time) in from 6 months to 1 year. The latest such proposal was made formally, in writing, under date of March 12, 1962, as follows:

"* * * I propose that the approximately 1,000 Trainmen cases now docketed with the First Division be disposed of on the following basis:

"1. That we start the ball rolling by you assigning in blocks of 25, Trainmen dockets to 1 or more of the carrier members.

"2. Where the issues involved have been decided by the division in previous awards, that such award or awards be followed and applied.

"3. Where previous awards of this Division go to deny a claim or claims, the docket before us will be likewise denied.

"4. Where previous awards of this Division go to sustain the claim, the claims before us will likewise be sustained accordingly.

"5. No dockets will be referred to a referee except where there exists an honest and legitimate difference of opinion."

The suggestion was practical and fully workable but rejected by the carrier members in letter dated March 21, 1962, their spokesman saying:

"According to information available to me the last meeting of representatives of the Railway Labor Executives Association with members of the Railroad Territorial Committee for the National Railroad Adjustment Board, for the purpose of discussing suggested remedies designed to expedite the adjudication of disputes docketed with the several divisions of the National Railroad Adjustment Board, was held on August 25, 1959. I have been informed that this discussion produced some constructive results, but perhaps not everything that was desired by the conferees. In my opinion, any suggestion or suggestions you may have which contemplate changes in the procedural rules under which we are working should be handled as such matters have heretofore been handled, i.e., by the chief executives of the participating brotherhoods with the committees that were established by the railroads to handle such matters."

Nothing came of this; in fact, the conditions here have continued to deteriorate.

Question No. 6: If the figures are available, I would like to know, broken down by year and by division of the National Railroad Adjustment Board, how many of the cases decided in 1960, 1961, and 1962 in favor of employees have been rendered without the necessity of a third party being appointed under section 3, First, (1) of the Railway Labor Act; and how many of the cases decided during these years adversely to employees have been rendered without the necessity of a third party being so appointed?

Answer:

	Favorable awards without referee	Unfavorable awards without referee
1960	5	121
1961	4	118
1962	2	34
Total	11	273

Question No. 7. Are orders of the National Railroad Adjustment Board in favor of employees in general complied with, or are employees frequently required to invoke the aid of the courts to obtain compliance with such orders? I refer to orders for the payment of money and to other orders.

Answer. There is a growing trend to resist payment of sustaining awards where money is involved and, in view of the judicial holding that the organiza-

tions may not strike to enforce them, enforcements proceedings must be undertaken or the carrier allowed to escape its obligations. The following awards where we were involved, were not complied with, in recent past: 19031, 19276, 19287, 19288, 19372, 19389, 19862, 20007, 20023, and 20291.

Enforcement proceedings were instituted in all except Nos. 19288 and 20291 to the best of our information.

There have been a few instances of a carrier refusing compliance with a nonmoney award, but there are enforceable under the act without a trial de novo as occurs where there is money awarded.

This office is not always informed of instances of noncompliance where our own awards are concerned and seldom learns of what happens to those from the other four organizations. The composite report from the four divisions will, undoubtedly, be more comprehensive in reply to your question No. 7.

The refusal to comply with an order of the First Division by paying a money award has been handled in the Congress with some success, in March 1937. The undersigned was general chairman of the Brotherhood when the First Division sustained claims in 13 awards which were rendered in June and July 1936. The carrier refused to honor the awards, but when the situation came to the attention of the U.S. Senate, the ends of justice were quickly served. I am attaching, hereto, as a matter of additional information, a memorandum prepared December 19, 1962, which gives a full acount of the affair.

Question No. 8. The question propounded is addressed specifically to the Chairman of the National Mediation Board. You will have noted in Mr. O'Neill's letter of July 17, 1963, the second paragraph, thereof, the statement: ** * the National Mediation Board is not in position to have sufficient information to answers specifically the various questions contained in your letter. We have, therefore, forwarded a copy of your letter to Mr. J. B. Zink * * * with the request that he furnish this office promptly with the information requested in the first seven questions contained in your letter."

We respectfully suggest that question No. 8 can best be answered by those qualified to reply to the other seven. Accordingly, we offer the following, striving for strict fairness and impartiality in what is said:

The question propounded by you is whether "legislation is necessary to establish a method of elimination of the backlog of cases, and delays in deciding them if, in fact, such backlog and delays exist?"

The existence of the backlog is a matter of fact; the delays are attested to by the very fact of existence of the backlog; the nature of the delays and their causes have been discussed in a comparatively brief reply to other questions. It is further a matter of fact that the present situation has developed under the provisions of the Railway Labor Act, as amended, and has done so within the 10 years following abolishment of the two Supplemental Boards in March 1953, which, in their turn, were put to work in October 1949, when the First Division was seeking a solution to the same identical problem which exists today.

Here we have indisputable evidence that this problem of an accumulating backlog, resulting from delay in deciding cases (as contrasted with a simple situation of receiving more cases than we can reasonbly be expected to decide without delay) is a chronic ill. We have discussed efforts made in the past to solve the problems of accumulating backlogs caused by delay in handling, which, in turn increases the backlog and lengthens the delay in decision. It has been demonstrated that the existing legislation does not contain remedial provisions applicable to the known ailments.

It is additionally a matter of fact that the entire problem was taken up by the representatives of the Nation's carriers and the presidents of the organizations in a series of meetings commencing in mid-December 1962, the purpose of which was to evolve an acceptable solution within the framework of the act. The undersigned did not participate in these meetings and cannot say with certainty what occurred in them but can state with emphasis, that nothing has occurred on the First Division itself to change in the slightest degree, the methods of functioning which (1) force claims of merit involving money payments to referees for decision and, (2) thus delay our handling, directly causing the slowdown in disposition and builds up the backlog. As of this writing, the situation has prevailed for the past 11 years at least, and the only sure way to expedite claims on the First Division is for the First Division labor members to agree to deny them.

The failure of the chief representatives of both sides to find a solution to the problem under the terms of the existing act indicates there is none. This, in turn, can be taken as positive evidence that (1) the Railway Labor Act must

be revised, or, (2) completely redrafted, to add specific provisions to remedy existing ills, as well as to insure against their reoccurrence. That is, we have found it is not enough to take limited action aimed at getting rid of a backlog, there must be something of a preventive nature which will preclude unconscionable delays on the part of the members of the Division, which will surely result in building another.

The question asked is limited to the advisability or necessity for remedial legislation and the answer has been strictly confined to it; thoughts or suggestions as to the nature of the corrective legislation will not be expressed, but if suggestions are desired, they can be obtained, I am sure, upon request addressed to the president of the Brotherhood of Railroad Trainmen, Mr. Charles Luna, Standard Building, Cleveland, Ohio.

Respectfully submitted.

B. W. FERN,
Labor Member, First Division, NRAB,
Representing the Brotherhood of Railroad Trainmen.

CHICAGO, ILL., *December 19, 1962.*

MEMORANDUM

At the present time (December 1962) those organizations represented on the First and Third Divisions of the NRAB, particularly, have repeatedly been confronted with a refusal by the carrier involved to make effective an award of the respective Divisions above mentioned, thus compelling the successful petitioner to either commence enforcement proceedings under section 3, first (p) of the amended Railway Labor Act, or use whatever other means are at its disposal in an effort to secure compliance.

While serving as general chairman of the Brotherhood of Railroad Trainmen on the Chicago Great Western Railroad Co., I progressed a number of claims to the First Division of the NRAB, which were disposed of by awards in June and July 1963. Among these were 13 awards sustaining the particular claims, Nos. 1241, 1245, 1246, 1247, 1248, 1249, 1251, 1252, 1253, 1254, 1319, 1322 and 1323, of which the first 10 were rendered by the Division without referee assistance. The railroad was in receivership at that time and sought to evade its liability under technical legal arguments based upon that fact—refusing to pay the claims which were sustained by the awards. The operating brotherhoods polled their memberships and a strike was authorized, which resulted in establishment of an emergency board by the President of the United States. This failed to persuade the carrier to meet its obligations, the most it would do was offer to pay 10 cents on the dollar in disposition of approximately $70,000 in time claims.

At about this time this deplorable situation came to the attention of the Congress and on March 25, 1937, Senator Borah, of Idaho, introduced Senate Resolution 101 in the U.S. Senate, calling for an investigation of the railroad's refusal to comply with the awards of the NRAB. The pertinent portions of the resolution (as shown in the Congressional Record) read as follows:

"Whereas the National Railway Labor Act and amendments thereto were enacted by Congress and approved by the President for the express purpose of supplying machinery for the peaceful adjustment of controversies concerning wages, working conditions, or other matters, which might arise between the railorads and their employees; and

"Whereas an essential part of this machinery is the National Railroad Adjustment Board with headquarters in Chicago, and made up of an equal number of representatives of the carriers and of the recognized unions of the employees; such Board constituting what might be described as a supreme court for the settlement of all disputes between the railroads and their employees; and

"Whereas said Board, after extended hearings and full consideration of the facts, recently decided that the Chicago Great Western Railroad had violated its wage agreement with certain organizations of its employees, and thereupon made awards to individual employees totaling approximately $50,000; and

"Whereas the trustees of the Chicago Great Western have refused to pay said awards, thus setting a precedent which, if it is followed by other railroads, may destroy the machinery set up by Congress for the peaceful adjustment of railroad labor disputes; and

"Whereas an emergency commission selected by the President of the United States, by authority of he Railroad Labor Act, has failed in its effort to persuade the trustees to recognize the validity of awards made by the National Railroad Adjustment Board; and

"Whereas because of the trustee's refusal to pay such awards the railroad labor organizations involved have polled their members and have been authorized by a substantially unanimous vote to withdraw all their members from service on the Chicago Great Western, thus threatening a serious interruption of interstate commerce: Therefore be it

"*Resolved*, That the Committee on Interstate Commerce, or any duly authorized subcommittee thereof, is authorized and directed to make and to report to the Senate the results of a thorough and complete investigation of all facts relating to the failure of the Great Western Railroad to adjust and settle the awards of the National Railroad Adjustment Board, and to make any recommendations necessary to carry into effect the awards of said Board; and any other facts or circumstances surrounding the failure of the said railroad to abide by the decision of the Board.

"For the purposes of this resolution the committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such times and places either in the District of Columbia or elsewhere, during the sessions, recesses, and adjourned periods of the Senate in the Seventy-fifth Congress, to employ such experts, and clerical, stenographic, and other assistants, to require by subpena or otherwise the attendance of such witnesses and the production and impounding of such books, papers, and documents, to administer such oaths, and to take such testimony and to make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words. The expenses of the committee, which shall not exceed $2,500 shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman."

Although Senator Borah's resolution gives the amount of money involved as $50,000, the actual amount more nearly approximated $70,000, as I have mentioned above.

The Congressional Record contains additional material of interest here and I quote the following excerpts:

March 31, 1937, Senators Wheeler, of Montana, Lewis, of Illinois, and Barkley, of Kentucky, made the following statements on the floor of the Senate:

"Mr. WHEELER. Mr. President, on Thursday of last week, the senior Senator from Idaho (Mr. Borah) presented a resolution directing the Committee of Interstate Commerce to inquire into the refusal of the trustees of the Chicago Great Western Railroad to pay certain awards made by the National Railroad Adjustment Board in favor of employees who are members of five of the standard railroad labor organizations—the Engineers, the Firemen and Enginemen, the Conductors, the Trainmen, and the Switchmen's Union of North America. The resolution came before the committee, and we are about to take it up and set it down for hearing; but I am glad to be able to report that since the Senator from Idaho introduced his resolution the trustees of the Chicago Great Western Railroad have agreed to pay the awards in full thus ending the unfortunate controversy. I have no doubt that the action of the Senator from Idaho in calling the matter to the attention of this body had a most wholesome influence, and contributed materially to the result achieved. In fact, I am sure it was the only thing that compelled the trustees to agree to settle on the basis on which they were justly entitled to settle.

"The amount involved in this case was not great—approximately $50,000—but the principle was of major importance.

"When Congress enacted the amended Railway Labor Act a few years ago, we endeavored to set up machinery which would facilitate the speedy adjustment of disputes between the carriers and their employees. The law recognizes in the most definite way the railroad worker's right to join the labor organization of his choice. It bans company-supported unions and outlaws the vicious 'yellow-dog' contract. Finally, it sets up what the Senator from Idaho, in his resolution, very happily described as 'a supreme court for railroad labor.' We may later wish to destroy all the courts; but the act sets up what is commonly recognized by the railroad employees as a supreme court for railroad labor. This is what is known as the National Railroad Adjustment Board. It consists of 36 members, 18 selected by the carriers and 18 by the standard railroad labor organizations.

"When a dispute arises concerning the proper interpretation of an agreement entered into between a carrier and a union the law contemplates that the representatives of the carrier and the union shall endeavor to reach an understanding. If that proves impossible, then an appeal may be taken to this supreme court—a tribunal made up of equal numbers of representative (sic) of the carriers and the employees—and all men thoroughly familiar with every phase of railroad work. Should that tribunal become deadlocked, a referee may be called in.

"It is difficult to imagine a fairer, a saner, method of adjusting industrial disputes. That the system has worked is evidenced by the fact that there has been no serious interruption of interstate traffic since this salutary law was enacted.

"The National Railroad Adjustment Board has rendered a great number of decisions. Some were in favor of the unions, and some were in favor of the carriers. As I understand, the unions in every case have accepted the verdict of the Board. In some cases the carriers have not.

"Perhaps the most flagrant example of a carrier's attempt to flout decisions of the National Railroad Adjustment Board is to be found in this case on the Chicago Great Western. The awards were made last June and July. They involved a number of individual grievances. The employees were so clearly right that in only one instance did the Board find it necessary to call in a referee.

"Nevertheless, the trustees refused to pay the awards. I am informed they even appealed to Federal Judge Charles E. Woodward, the judge responsible for their appointment. Judge Woodward made the grave mistake of advising the trustees that it was not necessary for them to pay the awards until they were instructed to do so by a court of competent jurisdiction, notwithstanding the fact that he himself was a court of competent jurisdiction. Of course, that meant a lawsuit, and the unions very properly, in my judgment, refused to become parties to long and expensive litigation.

"They held that if the awards of the National Railroad Adjustment Board were not accepted and if carriers persisted in appealing to the courts the elaborate system which Congress had devised for the adjustment of disputes between carriers and their employees would be weakened and possibly destroyed.

"So the unions polled their numbers, and the members voted to strike if the trustees did not accept the awards made by the National Railroad Adjustment Board. At that point the President of the United States appointed an emergency Board to inquire into the facts, and that Board, finding the facts substantially as I have stated them, endeavored to persuade the trustees to enter into fresh negotiations with the unions' representatives.

"These negotiation dragged, and a few days before the Senator from Idaho introduced his resolution the trustee suggested they would settle on the basis of 10 cents on the dollar. Of course, the unions rejected that offer, and now the trustees have paid 100 cents on the dollar.

"In my judgment they paid it only because of the fact that they were threatened that an investigation into the whole matter would be taken up by the Committee on Interstate Commerce.

"All through these proceedings the representatives of the unions exhibited the patience and good judgment which we have come to associate with the leadership of the standard railroad labor organizations. Sorely provoked, they might have ordered the strike which their members had authorized them to call. Had they done that, we would have had another serious industrial struggle on our hands, and all because two trustees, appointed by a Federal court, refused to comply with the letter and spirit of a law which has won such widespread approbation that even the National Association of Manufacturers—an organization noted for its opposition to trade unionism—has suggested that it might be used as a model for a Federal law to govern all industries.

"I am sure we are all glad the trustees of the Chicago Great Western have retreated from their untenable position. It is to be hoped that the managements of other railroads will follow their example.

"We cannot afford to permit the amended Railroad Labor Act, or any of its essential features, to be weakened or destroyed by shortsighted employers who, in order to gain a temporary advantage, are willing to invite an industrial war.

"Of course, we should take exactly the same attitude toward the unions should they attempt to scuttle this beneficient legislation. There is not much danger of that however. It is to their credit that the standard railroad-labor organizations sponsored the amended Railway Labor Act—the legislation with which the country is now so pleased. I am sure they will never do anything to jeopardize the structure they assisted in erecting.

"I am sure that if other industrial organizations and other unions would adopt the same methods which have been adopted by the railroad brotherhoods and the railroads, many industrial disputes, such as those from which the country is now suffering, would be avoided, and we would generally be in a very much happier and better state.

"Mr. LEWIS. Mr. President, permit me to say, in connection with the remarks of the able Senator from Montana (Mr. Wheeler), that this subject matter arose in a jurisdiction which I have the honor in part to represent. When the able Senator from Idaho (Mr. Borah) presented his resolution, I assumed then to state to the Senate that I had been informed that the difference between the company, the trustees, and the men was very slight, and I felt that it could be composed, but that there was a difference as to the facts. The Senator from Idaho stated he was quite sure the resolution would give opportunity of investigation which would reveal the real facts.

"Since then, while I have been in the Senate, I have been advised by the trustees and the counsel for the companies that a composure has been effected, as the Senator from Montana has just related, and I am pleased to join with him and with the officers of the company likewise in felicitations that complete peace and mutual confidence have followed between the company and its men.

"Mr. WHEELER. Mr. President, I wish to say just a word. An award was made by the board and the company offered 10 cents on the dollar in settlement of it. The President of the United States appointed a mediation board, and still the company refused to settle. It was only after a resolution was introduced in the Senate for an investigation of the situation that the Chicago Great Western finally paid the award, which had been made sometime last June.

"I hope that when other disputes of this kind arise the parties will settle them among themselves, following an award by the Board, regardless of whether the award is in favor of the unions or in favor of the companies, and that it will not be necessary every time, in order to get them to settle the award, to have a resolution introduced in the Senate for an investigation of the situation.

"Mr. Tydings obtained the floor.

"Mr. BARKLEY. Mr. President——

"The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Kentucky?

"Mr. TYDINGS. I yield.

"Mr. BARKLEY. I cannot let the opportunity pass without just a word of gratification over the result of this legislation, not only before the Supreme Court but in its operations throughout the country. The cause of my gratification is that it was my good fortune to introduce in the House of Representatives the bill, like the one introduced in the Senate by Senator Howell, of Nebraska, and which became known throughout the country then as the Howell-Barkley bill. The railroads desperately fought the measure in the House at that session, and were able to defeat it, but at the end of the session it was suggested by Members of the House and the Senate that the railroads and their employees get together during the recess of the Congress and see whether at the next session legislation of this character might not be enacted without serious opposition.

"As a result of that suggestion, the railroads and their employees, after many conferences during the recess, came to an agreement on the principle of the original bill, with very slight amendments, and the bill was enacted at the next session of the Congress. It is gratifying to all those who had any hand in the enactment of the law that it has been one of the most successful laws for settling labor disputes that has ever been placed on the statute books of the United States.

"It is to the credit of both the railroads and the employees that they have in most cases tried in good faith to observe the spirit of the law. We all know that the standard railway brotherhoods are among the highest class of organized employees in the United States, and the success of the law and its final justification before the Supreme Court in a unanmious decision offer hope that in the near future we may be able to work out legislation which will solve all other industrial disputes with as much efficacy and with as much peace and lack of disturbance.

"Mr. WHEELER. Mr. President, I do not think the Senator from Kentucky was in the Senate when I first spoke, but he refreshes my memory. After the railroad brotherhoods and the railroads agreed upon this particular piece of legislation and both sides came before the Committee on Interstate Commerce of the Senate, the attorney for the National Association of Manufacturers came before the committee and opposed the proposed legislation, notwithstanding the fact that both sides had agreed to it. Now we find the National Association of Manu-

facturers lauding the law, stating that it is a good law and that it ought to be worked out in industrial organizations. I am extremely glad to see that the National Association of Manufacturers have finally seen the light and are coming to the conclusion that this is a good law."

All of this came to the light again after Referee Hornbeck sustained time claims in Third Division Award No. 9221, in February of 1960. The carrier came back to the Third Division requesting an interpretation of the opinion and findings. The interpretation by the referee reaffirmed sustaining of the time claims, rejecting argument and evidence the carrier sought to inject into the case, going to the merits of claims for separate payment for each where more than one violation occurred during the tour of duty of a particular claimant. However, the referee obviously suggested that the carrier refuse to comply with the award, with the thought that it could make its complete amended case during de novo proceedings which would allow enforcement action on the part of the organization, if it went to court under section 3, first (p) of the act. Labor Member J. W. Whitehouse wrote a special concurring opinion in answer to this conduct on the part of the referee, and in it reproduced the material quoted above in connection with Resolution SR–101 of March 25, 1937. This is brought to your attention as a source for the quotations and excerpt I have made herein since the Congressional Record may not be readily available. It is identified as interpretation No. 1 to award No. 9221 of the Third Division, NRAB, docket No. TE–8375, serial No. 185.

The Senate resolution and related handling by the Senators in March of 1937 is, of course, distinguishable from enforcement proceedings such as we are now being forced to institute where carriers refuse to comply with a sustaining award. However, the thought occurs to me that those of you involved in enforcement actions may be able to make good use of it as your judgment dictates.

B. W. FERN,
Vice President, Brotherhood of Railroad Trainmen; Labor Member, First Division, National Railroad Adjustment Board, Chicago, Ill.

NOTE.—Investigation was made to determine the final outcome of the time claims sustained by award No. 9221 and Mr. Whitehouse advised this office December 18 that upon receipt of the interpretation and the special concurrence, the railroad paid the claims on the basis presented without further objection. The amount of money involved was approximately $4,070. B.W.F.

EXHIBIT NO. 13

NATIONAL RAILROAD ADJUSTMENT BOARD,
FIRST DIVISION,
August 9, 1963.

Hon. JOHN BELL WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN WILLIAMS: I have received a copy of the August 6, 1963, letter to Chairman O'Neill of the National Mediation Board, over the signature of C. A. Conway, Vice Chairman for the carrier members of the National Railroad Adjustment Board, furnishing replies to your letter of July 11, 1963, re conditions on the National Railroad Adjustment Board.

They express different conclusions from those in my letter of July 31 and accompanying report, on the same subject matter. I call your particular attention to the fact they had my reply when making theirs, and do not controvert nor deny anything I had to say.

The replies of the carrier members to the first three questions require no comment. Taking up the answers, commencing with that to question No. 4:

The sense of the second paragraph thereof is that because there has been a constant fluctuation in the backlog of cases on the First Division, "there is no reason why the present upward trend should continue." The rationale of this escapes me. My reply to question No. 4 explains in detail why the backlog exists and why it is growing. The carrier members had a copy of my full report in their hands when preparing their own and the bland statement quoted above does not challenge what I had to say. They go on to remark: "On the contrary, it would seem reasonable to conclude that by determined efforts the parties can again substantially reduce, and even eliminate completely, the backlog by adopting methods which have heretofore been used." The significant facts to note are

that while the backlog has steadily increased, the number of cases decided decreases annually.

Suffice it to point out the backlog grew in the face of those "methods" and that all efforts to induce the carrier members to cooperate in solving the problem have been rebuffed. This office and the heads of the five organizations represented on the First Division have tried repeatedly during the last 8 years or so, to persuade the railroad managements and their men on the NRAB to take appropriate action, with no success.

The third paragraph of the carrier members' reply has to do with the situation on the Third Division and states: "It is anticipated that by reason of procedures described in the answer to question No. 5, the backlog will be substantially reduced progressively during the coming months, with the expectation that the Division will be on a current basis in the near future."

After citing sections of the Railway Labor Act "designed to expeditiously dispose of" these cases, it is said the procedures mentioned "have been used from time to time, and are still being used" to accomplish the purpose. They say: "It was by use of such procedures as provided in the act that the serious backlog of the First Division has been" reduced from the 6,033 cases pending in 1942 to the 3,793 now on hand. Reference to their exhibit A will show that during the period mentioned, the Division decided 13,245 disputes while 13,326 cases were withdrawn by the parties; that in spite of the fact as many cases were withdrawn as were decided, the backlog steadily increased from 2,321 in 1946–47 to the present 3,793.

Add to this the further fact that absolutely no action has been taken to correct the situation although repeated efforts have been made, several by direct approach to the carrier members themselves, and continuation of existing trends means we have 25 years of work on our hands right now, there is no foundation for the opinion we will shortly bring our affairs to a current handling basis and stay that way. In short, the facts show the backlog has been steadily growing since 1947 and this is not affected by pointing out we had more cases on hand in 1942 than we do today. The record shows we have received an average of less cases per year than this Board used to decide annually, from 1955 to the present time, whereas the productivity in cases decided has dropped from an average of 994 per year to 163 for the calendar year 1962 and 94 for the first 7 months of 1963.

The carrier members then discuss establishment of the supplemental board on the Third Division and say it "has resulted in doubling the output of awards on the Third Division"; that "the backlog has already shown a drop and it is believed that the reduction in the number of pending cases will continue, with the probability of eliminating the backlog in the near future."

Appended, hereto, is a statement of the performance of the Second, Third, and Fourth Divisions, NRAB, excerpted from pages 86 and 87 of the 28th Annual Report of the National Mediation Board, presumably reflecting data furnished by the respective Divisions, as to their functioning for the years 1958 through 1962. (We have not received the report for the fiscal year 1962–63 as of this date.)

The Third Division supplemental board commenced functioning June 1, 1961. The report shows that the Third Division backlog increased from 2,102 in 1958 to 2,646 in 1961, and that it further increased to 2,731 in 1962. Carrier members' exhibit B gives us the 1962–63 performance and shows 786 cases decided by awards; 126 withdrawn while 779 were docketed, giving a net reduction of the backlog of 133 cases. Assuming this reduction were to remain constant, even to increase to, say 200 per year, with a backlog of 2,598, it would still require about 13 years to bring the Third Division up to date.

The optimistic outlook of the carrier members as pertains to the reduction of the backlogs on the First and Third Divisions does not find support in the facts.

The answer to question No. 5 concludes by saying: "The appropriate committees representing the labor organizations and the railroads are continuing their study of the backlog on the First Division." I have already given an account of our efforts to break the blockade on the First Division; the exchanges of correspondence with the carrier members speak for themselves. The identity of the "appropriate committees" is unknown to the author of this letter nor is he aware of any continuing study of the backlog by any committee jointly representing the five organizations and the managements.

The answer to question No. 6 is a statement of fact; the picture represented bears out criticism expressed by railroadmen throughout the Nation and needs no further comment.

The answer to question No. 7 is correct in that the Divisions do not maintain records of compliance or noncompliance with our awards. The latter part stating the awards are consistently complied with and that it is rarely necessary "for the employees to resort to the courts" cannot be accepted. This entire matter was handled thoroughly with top representatives of the carriers in meetings commencing in mid-December 1962, at which time it was brought out that approximately 80 awards of the several Divisions had not been complied with. The reply of July 31, 1963, lists specific numbers of First Division awards involved and, presumably, the report of the labor members of the other three Divisions will cite theirs.

The answer to question No. 8 recommends a hands-off, do-nothing policy to which I cannot subscribe. All efforts which have been undertaken, either with the carrier members themselves or through their employers, have failed. Note the total absence of any practical suggestion for improving conditions.

It is not my purpose to engage in a running exchange of correspondence but I thought it necessary to call the facts herein contained to your attention, particularly in view of the complete silence of the carrier members with reference to the truth and accuracy of what I have already said.

Yours very truly,

B. W. FERN,

Labor Member, First Division, NRAB, Representing the Brotherhood of Railroad Trainmen.

cc: Francis A. O'Neill, Jr., National Mediation Board; Hon. William G. Bray, Congress of the United States, House of Representatives, Washington, D.C.; Charles Luna, president, Brotherhood of Railroad Trainmen; A. H. Cheser, N.L.R., Brotherhood of Railroad Trainmen; J. B. Zink, chairman, NRAB; carrier members, First Division; labor members, First Division.

CASES DOCKETED AND DISPOSED OF BY THE NATIONAL RAILROAD ADJUSTMENT BOARD, FISCAL YEARS 1935 THROUGH 1962, INCLUSIVE, AS REPORTED AT P. 86, 28TH ANNUAL REPORT OF THE NATIONAL MEDIATION BOARD, FOR THE FISCAL YEAR ENDED JUNE 30, 1962

Cases disposed of by rendition of awards or by their withdrawal prior to decision, for the years 1958 through 1962 and a total, 1935 through 1962

2D DIVISION

	1958	1959	1960	1961	1962	Total (1935–62)
Without reference	7	3	7	8	13	682
With reference	259	269	110	270	165	2,499
Withdrawn	99	111	105	15	18	801
Total	365	383	222	293	196	3,982
Backlog	268	282	365	288	379	----------

3D DIVISION

Without reference	14	10	3	17	10	849
With reference	311	233	309	342	534	7,439
Withdrawn	80	221	312	127	144	2,316
Total	405	464	624	486	688	10,604
Backlog	2,102	2,408	2,399	2,646	2,731	----------

4TH DIVISION

Without reference	0	4	18	13	8	287
With reference	74	85	41	33	73	1,041
Withdrawn	26	22	15	35	38	331
Total	100	111	74	81	119	1,659
Backlog	48	83	89	106	113	----------

EXHIBIT No. 14

THE WHITE HOUSE,
Washington, May 6, 1964.

Hon. FRANCIS A. O'NEILL, Jr.,
Chairman, National Mediation Board,
Washington, D.C.

DEAR MR. CHAIRMAN: Your replies to my requests for reports on efficiency, economy, and personnel ceilings in your agency have been carefully reviewed.

It is my earnest desire that you continue to search for and take advantage of every opportunity to achieve reductions in your manpower and money requirements.

Our goal of the utmost efficiency and economy in the conduct of governmental programs can be attained only by persistent attention. The National Railroad Adjustment Board should seek means to improve its procedures in order to reduce its backlogs to manageable proportions. The carriers and unions should also give serious consideration to all feasible means, including user charges and other legislative amendments, to hasten grievance settlements. I urge you to continue your efforts to these ends and to report to me as soon as possible on the results obtained.

Sincerely,

LYNDON B. JOHNSON.

EXHIBIT No. 15

NATIONAL RAILWAY LABOR CONFERENCE,
Chicago, Ill., July 28, 1964.

Mr. CHARLES LUNA,
President, Brotherhood of Railroad Trainmen,
Cleveland, Ohio.

DEAR MR. LUNA: On July 16, chairmen of the Carriers' Territorial Committees for the National Railroad Adjustment Board met with representatives of Engineers, Firemen, Conductors, & Switchmen's Union of North America to discuss ways and means to eliminate the backlog of cases pending before the First Division and keep the Division on a current basis in the future.

It was agreed by those present that it would probably be necessary to establish supplemental boards to take care of the backlog now existing, however, prior to taking action to that end, representatives of the organizations present felt that it would be advisable for a review to be made of pending cases before the First Division by "national officers of the brotherhoods and representatives of individual carriers" who have large numbers of outstanding dockets. To this end, the organizations' representatives asked that I furnish them with a recommended list of railroads on which they would have such review conducted. With the thought in mind that trainmen might also like to conduct such a review, following is my suggested list of railroads and the number of trainmen's dockets pending on each:

Atlantic Coast Line	64
Baltimore & Ohio	22
Chesapeake & Ohio	66
Chicago Rock Island & Pacific	28
Delaware & Hudson	153
Denver & Rio Grande	18
Duluth, Winnipeg & Pacific	18
Florida East Coast	60
Gulf Mobile & Ohio	30
Illinois Central	25
Louisville & Nashville	40
Nickel Plate	68
Norfolk & Western	32
Pennsylvania	23
Richmond Fredericksburg & Potomac	71
Seaboard Air Line	58
Soo Line	39
South Buffalo	34
Southern Railway System	162
Southern Pacific	84
Union Pacific	15
Wabash	24
Washington Terminal	46

It was agreed that during the course of this review, the dockets would remain on the active list of the First Division, but it is hoped that settlement of a substantial number of cases will be reached.

It was also understood that after the organizations had completed the review on a number of railroads, we would then meet again to determine whether it would be necessary to establish supplemental boards to further reduce the backlog on the First Division, and place it on a current operation.

The program of action mentioned above was agreed to on the understanding that the carriers and the chiefs of the organizations would instruct their respective members of the First Division to immediately undertake to increase the productivity of the Division to the highest level possible. I am instructing the carrier members to cooperate to that end, and hope that you will do the same.

Yours very truly,

J. E. WOLFE.

EXHIBIT No. 16

BROTHERHOOD OF RAILROAD TRAINMEN,
August 10, 1964.

Mr. J. E. WOLFE,
Chairman, National Railway Labor Conference,
Chicago, Ill.

DEAR SIR: This refers to your letter of July 28, 1964, on the subject of the July 16 meeting of the chairman of the Carriers' Territorial Committees for the National Railroad Adjustment Board with the representatives of the engineers, firemen, conductors and switchmen to discuss ways and means to eliminate the backlog of cases pending before the First Division and to keep the Division on a current basis in the future.

It is noted that those present were in agreement that it would probably be necessary to establish supplemental boards to take care of the backlog now existing; however, prior to taking such action, representatives of the organizations present felt that it would be advisable for a review to be made of pending cases before the First Division by national officers of the brotherhoods and representatives of individual carriers who have large numbers of outstanding dockets. At the request of the organization representatives, you furnished them with a recommended list of railroads on which they would have such review conducted. You have furnished me with such a list with the thought in mind that this organization might like to conduct such a review I have checked your list and find it accurate and that it constitutes railroads where 15 or more cases are pending.

With respect to this proposed review of pending cases on the selected railroads, I would be inclined to go along with such a procedure provided the railroads concerned would likewise appoint representatives for the purpose of reviewing the cases who have not participated in any way in the handling and progression of such cases; otherwise, our representative who would have had no part in the handling of the cases before him, would be confronted with the same personnel officer who was a party to sending the cases to the Board in the first place. A fresh approach to the cases would require, as above suggested, that neither side be represented by persons who participated in the progression of the cases on the property. Unless this is done, I feel that the proposed review could accomplish little if anything.

There is, of course, the question of how the cases would be disposed of if such appointed representatives could be agreed upon and they actually should reach some tentative disposition of a case or cases. Under the rules of the First Division, once the case is submitted, it can be removed in only two cases:

(1) By an award rendered on the merits;

(2) By being withdrawn before it has been placed on a referee list.

A third possibility could be arranged through an agreement between the parties and the membership of the Division to have the reviewing representatives prepare proposed findings and awards subject to approval and adoption by the regular members of the Division. Unless such a procedure is arranged, the proposed review would seem pointless.

Now I will comment finally on the suggestion that it is advisable to establish supplemental boards to reduce the backlog. I presume what the parties had in mind would be the establishment of supplemental boards such as the two set up under section 3, first (w) of the Railway Labor Act and which functioned from

the latter part of 1949 to March 1953. Undoubtedly while such Board's function, the total number of awards rendered by the First Division would increase; however, I must point out that what is needed most in the function of the Division is the approach of both sides to the problem by agreeing to accept prior decisions which are clearly the controlling weight of authority as the basis of settlement of similar pending disputes. Without the benefit of prior determinations, any tribunal having the duty to adjust disputes of the nature concerned with the Division can only find itself functioning without direction or purpose. This is the main cause for the present backlog. Until the respective members of the First Division begin to recognize and apply the principles they have developed through their experience with similar cases, the backlog will remain.

I am furnishing our members of the First Division with a copy of this letter, passing on the instructions that our respective members immediately undertake to increase the productivity of the Division to the highest level possible. I am further suggesting that both sides authorize and instruct their respective members to undertake to reach an understanding concerning procedure whereby prior decisions which are clearly the controlling weight of authority shall be accepted as guidelines for the settlement of similar pending disputes.

Your very truly,

CHARLES LUNA, *President.*

cc: Mr. B. W. Fern, Assistant to the President.

EXHIBIT No. 17

BROTHERHOOD OF RAILROAD TRAINMEN,
Cleveland, Ohio, October 6, 1964.

To: Howard G. Gamser, Chairman, National Mediation Board, Washington, D.C.
Copies to: Congressman John Bell Williams, chairman, Subcommittee on Transportation and Aeronautics, House Office Building, Washington, D.C., Mr. J. E. Wolfe, Chairman, National Railway Labor Conference, Chief Executives, B. of L.E.; B. of L.F. & E.; O.R.C. & B. and S.U.N.A., and to B. W. Fern, Assistant to President, B. of R.T.

DEAR MR. GAMSER: Under date of September 23, you wrote a joint letter to the heads of the five operating brotherhoods and Mr. J. E. Wolfe, asking each of us to give you the information requested by the Honorable John Bell Williams, Member of Congress, chairman, Subcommittee on Transportation and Aeronautics in his communication to you, dated September 21, 1964.

Attached to your letter was a copy of Mr. Williams' letter from which I find he had reference to your testimony during the hearings concerning proposed H.R. 8982, 8983, and 8984, July 21, 1964, in Washington, when you "discussed a program formulated by Mr. J. E. Wolfe, chairman of the National Railway Labor Conference, designed to mitigate the backlog of work on the First Division of the National Railroad Adjustment Board. This program was to be presented to and reviewed by the chiefs of the operating brotherhoods."

Mr. Williams asked you to "please furnish the subcommittee whatever information you can about that program and its present status."

I do not have the transcript of your testimony and so will be unable to comment on it; as to the program, allegedly formulated by Mr. Wolfe to reduce the backlog of work at the first division, I can give you a factual statement of what has transpired between Mr. Wolfe and his associates, and the Brotherhood of Railroad Trainmen and our representative on the first division. Your letter indicates you will consolidate the replies of those addressed into a "complete and factual statement" to be forwarded to Congressman Williams. Please furnish me with a copy thereof for my records and information.

As to the data you request: this will be presented in chronological order with little or no comment since the bare facts speak for themselves.

The office of the president, Brotherhood of Railroad Trainmen, was informed early in 1954 and at regular intervals thereafter, down to the middle of 1962, that conditions on the first division, National Railroad Adjustment Board, had deteriorated alarmingly. The backlog of undecided cases was steadily increasing; the productivity of the division was declining yearly and this inevitably resulted in cases being delayed in processing to final decision.

Brotherhood of Railroad Trainmen member on the first division, B. W. Fern, wrote this office pointing out these facts; the records shows he made a formal

written proposal to the carrier members under date of March 12, 1962, for expediting disposition of trainmen's cases (which comprised approximately 40 to 45 percent of the backlog) simply requiring both sides to apply established precedents of the division's own awards to sustain or deny claims, letting only those where there was room for an honest difference of opinion go to a referee. The spokesman on behalf of the carrier members rejected the proposal saying this subject was something to be handled between representatives of the Railway Labor Executives Association and members of the railroad territorial committees for the National Railroad Adjustment Board. It was stated further that the last meeting of the kind was held August 25, 1959, which "produced some constructive results, but perhaps not everything that was desired."

The facts are, the division rendered 457 awards in 1958, but in 1959 only made 366—276 of them being by referee and 90 by the division itself. In 1960, 366 awards were again rendered; in 1961 the output dropped to 322 and in 1962, the division itself rendered but 39 awards, another 124 being rendered with referee assistance for a grand total of 163; in 1963 the division, without referee, was able to decide only 37 cases and, with the help of referees, rendered another 122 for a total of 159. In the meanwhile, the backlog was increasing and the age of the decided cases getting older—claimants faced the prospect of receiving decisions after waiting from 6 to 9 years and the situation was certain to get worse if something were not done.

The facts were made known to the chief executives of the other operating brotherhoods and to the railroad managements. Under date of November 13, 1962, Chairman G. E. Leighty of the Railway Labor Executives' Association wrote all the chief executives of the railroad employees' organizations, saying this situation (and alleged similar conditions on the other three divisions of the NRAB) had been discussed at several meetings of Railway Labor Executives' Association; a committee was appointed to meet with one representing the railroad managements, and headed by Mr. Wolfe. Mr. Wolfe suggested the two committees meet at 2 p.m., December 12, 1962, in the Union Station Building, Chicago, Ill. Mr. Leighty proposed that the chief executives (who represent the employees subject to the jurisdiction of the four divisions of the NRAB) hold a preliminary meeting together with the labor members of the four divisions, at 2 p.m., December 11, 1962, which was done.

At that time, I was assistant to President W. P. Kennedy and he appointed me to represent the brotherhood in this matter. I attended the meeting set up for December 12, 1962. It was proposed the cases in the backlog could be disposed of, in large part, by this procedure.

The backlog then consisted of about 3,600 cases; it was suggested 11 broad categories of disputes be recognized, into which the 3,600 would be distributed; they would then be further broken down into the five crafts represented—that is, separated as between engineers, firemen, conductors, trainmen and switchmen/union cases. These cases would then be removed from the working calendar of the first division to be decided by panels of members to consist of one representative each, from the organization involved and from management side. These representatives would agree upon such of the cases as they could, and the disputed dockets would be sent to referees. While this was going on, the regular members of the division would handle currently submitted cases.

There were obvious drawbacks to this proposal: In order to sort the cases out, it would be necessary to go through 3,600 dockets to determine the category they belonged in; from our experience, we knew these 11 suggested categories could not possibly cover the many types of cases involved. Next, if the 3,600 cases were sifted into various categories for handling by appointed special members, there would be cases from all five organizations and the labor members would want to handle their own because of possible differences in contracts. There was question as to the form to be used in the decisions as compared with disposition of other cases by official awards of the first division. If the proposed arrangement were adopted and resulted in setting up five two-member special panels, we would have the spectacle of those five, plus the regular membership, grinding out awards without too much regard for what each other was doing. The whole proposition was too faulty for approval of adoption by the members of the division itself.

At this time (the meeting of December 12, 1962) it was also brought out that the railroads were refusing to comply with awards of the first division and this was taken under consideration by Mr. Wolfe as a new matter to him. Subsequent handling of the question of railroad noncompliance with sustaining awards was nonproductive.

These meetings and the problems they sought to solve were without definite result; subsequent handling between December 12, 1962, and May 1964, were similarly unproductive of concrete results.

Congressman Williams had taken an active interest in the deplorable conditions on the first division before this. On July 12, 1963, he wrote Mr. O'Neill, propounding eight questions; your files will show the reply prepared by the Brotherhood of Railroad Trainmen member on the first division, Mr. B. W. Fern, under date of July 31, 1963, and another communication on the same subject dated August 9, 1963. These replies and related data establish as a fact that the representatives of the organizations had been handling this same problem with the railroad representatives since July of 1937, without ever being able to accomplish anything corrective or remedial.

Under date of May 6, 1964, President Lyndon B. Johnson wrote the former Chairman of the National Mediation Board (Francis A. O'Neill, Jr.) suggesting that, "The National Railroad Adjustment Board should seek means to improve its procedures in order to reduce its backlogs" and that, "The carriers and unions should also give serious consideration to all feasible means, including user charges and other legislative amendments, to hasten grievance settlements."

The Chairman was urged to continue efforts in these directions and report on results obtained. On May 21, 1964, the Honorable John Bell Williams wrote the Chairman of the National Mediation Board, requesting that he be kept informed as to the results obtained. The Chairman wrote the chief executives of the operating brotherhoods and the representative of the railroads—Mr. J. E. Wolfe—setting up a joint meeting at the Palmer House in Chicago, 10 a.m., June 11, 1964.

I designated assistant to the president, Mr. B. W. Fern, to represent the Brotherhood of Railroad Trainmen at this meeting. He called the attention of all present to prevailing conditions which were causing the backlog and the long delay in disposing of disputes—the necessity of deciding everything with a referee even though the same question might have been settled in a number of prior awards of the Board. Mr. Wolfe said these things should not be discussed; that a solution was more important in improving conditions in the future. You were present at that meeting and will recall Mr. Wolfe saying he was not there to listen to criticism.

You then suggested that under a 1951 law, the parties to cases at the divisions could be required to pay a user's charge in connection with referee expense and this might reduce the cost of running the Board; you further suggested that establishment of special boards on individual properties which have 25 or more cases pending would reduce the backlog by some 2,000 dockets.

Other labor representatives spoke about the impossibility of getting awards without referee assistance unless the organizations would agree to deny claims; that the carrier members will not follow precedents, rules or anything else, if it means a claim must be sustained.

Mr. Wolfe spoke again, saying he thought that if special boards were established, both parties would learn to accept their responsibilities and would not submit so many cases to the division which they could settle themselves; he said experience gained in handling cases on their own boards would educate them in self-settlement without recourse to the division.

You spoke then, saying the present budget would not provide for the proposed special boards, that the expense would have to be underwritten by the organizations; you inquired as to whether the operations of the Board were hampered by absences of labor members. The replies of those present established that the work of the division was not adversely affected.

Mr. Wolfe then said the carriers would have territorial meetings and meet with a representative from each organization; thereafter the Mediation Board would be advised of the results; he said he felt sure both sides would cooperate and the problem could be solved with a little effort.

Representatives of the organizations and the railroad managements were in accord with Mr. Wolfe's suggestion and said they would arrange to make a report to the Mediation Board within 1 month so the President of the United States could be informed of how his directive was being implemented.

A last word on this meeting: you will recall remarking that you heard a carrier member of the first division say he had no authority, or right to settle a case without the aid of a referee unless he received written authority and instructions from the carrier involved. Mr. Wolfe said this was a "damn lie" and asked you for the name of the carrier member. You declined to furnish it, saying your information was received in Washington during the testimony before the Senate

on the Adjustment Board situation. Mr. Wolfe was obviously infuriated and again denied this was the case.

The meeting was adjourned with the understanding additional meetings would be held and a report given the Mediation Board so suitable reply could be made to the President of the United States.

The next meeting was held July 16, 1964, at the Union Station Building in Chicago, attended by representatives of the operating brotherhoods (except the Brotherhood of Railroad Trainmen; I sent a telegram explaining inability to have anyone present) and the railroads.

I understand the other four operating brotherhoods were represented at this meeting and you will receive a report on it in their replies. For present purposes, I believe it advisable to quote here, from the report of Mr. G. L. Buuck, assistant grand chief engineer, Brotherhood of Locomotive Engineers, to the head of his organization as to what was understood at the July 16 meeting:

"Mr. Wolfe closed the meeting by saying that he would write individually to the chiefs of each organization setting out the suggestions that were discussed at this meeting. The letter would not be in the form of agreement, as it was agreed by all that absolutely no commitments were made, but as a suggestion for an area of agreement to be consummated in the future which would be workable to the best interests of the carriers and the organizations alike. The letter will be open for consideration or deletion by the various chiefs, individually, with a will to have a collective answer to our mutual problems."

Presumably, this was the basis for a letter written me by Mr. Wolfe dated July 28. After mentioning the fact the meeting had been held July 16 between the chairman of the carrier's territorial committees for the National Railroad Adjustment Board and representatives of the Engineers, Firemen, Conductors, and Switchmen's Union, Mr. Wolfe said:

"It was agreed by those present that it would probably be necessary to establish supplemental boards to take care of the backlog now existing; however, prior to taking action to that end, representatives of the organizations present felt that it would be advisable for a review to be made of pending cases before the first division by national officers of the brotherhoods and representatives of individual carriers who have large numbers of outstanding dockets. To this end, the organizations' representatives asked that I furnish them with a recommended list of railroads on which they would have such review conducted."

He then listed the railroads which had 15 or more cases pending with the B. of R.T. and concluded by saying:

"It was agreed that during the course of this review, the dockets would remain on the active list of the first division, but it is hoped that settlement of a substantial number of cases will be reached.

"It was also understood that after the organization had completed the review on a number of railroads, we would then meet again to determine whether it would be necessary to establish supplemental boards to further reduce the backlog on the first division, and place it on a current operation.

"The program of action mentioned above was agreed to on the understanding that the carriers and the chiefs of the organizations would instruct their respective members of the first divison to immediately undertake to increase the productivity of the division to the highest level possible. I am instructing the carrier members to cooperate to that end, and hope that you will do the same."

Note Mr. Wolfe's several allegations that the handling he outlined had been "agreed" to, whereas a labor representative present stressed the fact no agreement was reached nor was any commitment made along such lines. In this connection, I again rely upon the records of the assistant grand chief, G. L. Buuck, Brotherhood of Locomotive Engineers. Mr. Wolfe wrote Grand Chief Engineer P. S. Heath, July 28, 1964, substantially the same letter as sent me. This was referred to Mr. Buuck and in his reply of August 12, he took exceptions to Mr. Wolfe's reference to the method of handling having been agreed upon, saying:

"I cannot agree with Mr. Wolfe's statement in the first sentence of paragraph two of his letter of July 28, namely, 'It was agreed that it would probably be necessary to establish supplemental boards to take care of the backlog now existing * * *.' Mr. Wolfe stated in the meeting of July 16 that we did not agree on anything, and his letter of July 28 was not being written with the understanding that any agreement was reached."

I replied to Mr. Wolfe, August 10, and the best way of conveying to the reader the nature of my answer is to quote the pertinent part:

"With respect to this proposed review of pending cases on the selected railroads, I would be inclined to go along with such a procedure provided the rail-

roads concerned would likewise appoint representatives for the purpose of reviewing the cases who have not participated in any way in the handling and progression of such cases; otherwise, our representative, who would have had no part in the handling of the cases before him, would be confronted with the same personnel officer who was a party to sending the cases to the Board in the first place. A fresh approach to the cases would require, as above suggested, that neither side be represented by persons who participated in the progression of the cases on the property. Unless this is done I feel that the proposed review could accomplish little if anything.

"There is, of course, the question of how the cases would be disposed of if such appointed representatives could be agreed upon and they actually should reach some tentaives disposition of a case or cases. Under the rules of the first division, once the case is submitted, it can be removed in only two ways:

"(1) By an award rendered on the merits.

"(2) By being withdrawn before it has been placed on a referee list.

"A third possibility could be arranged through an agreement between the parties and the membership of the division to have the reviewing representatives prepare proposed findings and awards subject to approval and adoption by the regular members of the division. Unless such a procedure is arranged, the proposed review would seem pointless.

"Now I will comment finally on the suggestion that it is advisable to establish supplemental boards to reduce the backlog. I presume what the parties had in mind would be the establishment of supplemental boards such as the two set up under section 3, first (w) of the Railway Labor Act and which functioned from the latter part of 1949 to March 1953. Undoubtedly, while such Boards function, the total number of awards rendered by the First Division would increase; however, I must point out that what is needed most in the function of the Division is the approach of both sides to the problem by agreeing to accept prior decisions which are clearly the controlling weight of authority as the basis for settlement of similar pending disputes. Without the benefit of prior determinations, any tribunal having the duty to adjust disputes of the nature concerned with the division can only find itself functioning without direction or purpose. This is the main cause for the present backlog. Until the respective members of the First Division begin to recognize and apply the principles they have developed through their experience with similar cases, the backlog will remain.

"I am furnishing our member of the first division with a copy of this letter, passing on the instructions that our respective members immediately undertake to increase the productivity of the Division to the highest level possible. I am further suggesting that both sides authorize and instruct their respective members to undertake to reach an understanding concerning procedure whereby prior decisions which are clearly the controlling weight of authority shall be accepted as guidelines for the settlement of similar pending disputes."

This is the way the matter now stands; there is no agreed-upon program for disposing of the backlog at the First Division, nor is there immediate prospect of one insofar as I know. As to instructions to be given our respective representatives on the First Division to increase their productivity—I am aware of none being issued to the carrier members. The record this organization has made in the development of the handling now before Mr. John Bell Williams, establishes that the B. of R. T. representative on the division has been functioning to best of his ability for years, and is continuing to do his best. However, these efforts are nullified for lack of cooperation on the part of the carrier members. In support of this, please note that in 1962, the division rendered 39 awards without referee and not one of these was a sustaining decision; in 1963, there were 41 cases disposed of without referee, 4 of which sustained the claim; thus far in 1964, after 9 full months of operation and two of them after Mr. Wolfe was purportedly instructing his people to improve their productivity on the division, only 25 dockets have been decided without referee assistance, and just 3 of them sustained the position of the employees. The total output of the division for the 9 months of 1964 is 98 awards and it is self-evident at this pace the division will fall short of the 159 total for 1963, even though that figure was the worst showing ever made in the 30 years the division had been in existence.

Summing up my reply, I emphasize there is no agreed-to program in effect between the committees for management and the operating brotherhoods which will reduce or completely dispose of the pending First Division backlog. My letter in response to Mr. Wolfe's proposal of July 28, briefly relates the reasons

why oustide parties must carefully work out an arrangement with the members of the First Division in order to insure that anything we attempt in reducing the backlog will be consistent with the Railway Labor Act and the Division's own rules of procedure.

Another last important point to be made is elimination or substantial reduction of the backlog is a comparatively easy job but this will not be remedial action such as is needed. The cause of the backlog will still exist and the Division, working as it does, will immediately begin accumulating another. I do not think we accomplish anything if we subscribe to permitting conditions to remain unchanged on the Division—the Board to continue deciding 150 or so cases a year instead of the 1,000 that should be expected from it—and then, when this builds up another 3,000- or 4,000-case backlog, engage in 2 or 3 years of handling to evolve a method of distributing the backlog cases back on the properties which sent them in.

The problem which Mr. Wolfe and his associate will not face and attempt to solve, is the shameful productivity rate of the First Division itself and it is the primary reason these backlogs continually build up. Mr. Williams and your office have been furnished voluminous evidence on this, and I think it is clearly shown the main fault lies with the carrier members in their refusal to sustain any claim no matter how many precedent cases are shown them in support thereof. We have shown the fact of only 22 sustaining awards on trainmen's cases in a period of nearly 12 years, we have shown that two of the five carrier members have never once agreed to pay a claim. It is a matter of fact that this same condition exists today; that if Mr. Wolfe's letter about telling his people to get down to business was relayed to the carrier members of the First Division, somehow it must have been made known to them that they should disregard it.

In this connection, I direct your attention to testimony now in the record before the congressional subcommittee, of which Mr. Williams is chairman, where the representatives of the railroads (who are the bosses over the carrier members of the division) have categorically stated repeatedly that the managements are entitled to decisions by referees in all cases sent to the Board, under the provisions of the Railway Labor Act which spell out the mechanics of furnishing referees to break deadlocks.

It is common knowledge the carrier members have regular meetings with their bosses and are under strict control; I say that where it is testified before the Members of Congress, that the railroads want all cases handled to a referee unless the labor members will agree to a denial, and the record shows the carrier members practically never sustain a claim involving money payments on their own initiative, it is just a two and two make four proposition, that Mr. J. E. Wolfe and other members of the management committee in control of their members on the First Division, have given those men instructions to so conduct themselves.

The whole theory of the Congress in passing the amended Railway Labor Act, was to create a "supreme court" for the railroad industry, to afford them a place to take highly technical railroad problems for fair decision by equal representation consisting of practical railroad men familiar with the industry, precedents, and practical application of the agreements. For this to work as the Congress intended, both sides are charged with the responsibility of assigning men as members of the divisions to take up their jobs in an honest application of their knowledge, experience, and backgrounds for the purpose of fairly deciding as many of the disputes as they can. I say these men can so function and should be expected to decide at least 80 percent of the cases themselves; that 20 percent or less, should have to be referred to third parties, particularly when it is provided by law, that such third parties must be "neutral" referees and by the very method of selection, cannot have any practical background knowledge, so essential in making decisions of this kind.

The five labor organizations of the First Division assign their representatives with this in mind; that the men so appointed are given a free hand to carry out the duties of their assignment. The carrier members of the First Division are not permitted to do so; they are only permitted to handle the work of the Division in the manner spelled out in the instructions they receive from Mr. J. E. Wolfe and his committee of associate management representatives. Mr. Wolfe has denied this is the situation and will probably do so again, but the record and the evidence it contains is convincing to the contrary.

As matters are now ordered, we have a "supreme court" consisting of five judges for each, the plaintiffs and the defendants—the judges being compen-

sated by the parties they represent. I say the organizations have empowered their "judges" to dispose of the cases on the merits based on controlling precedent and to the best of their ability. The "judges" in the employ of the managements cannot function in the manner intended.

In conclusion, I say our problem is not to engage in handling of this kind every few years for the purpose of shoveling out the First Division stables; the remedy is to take such action as will result in the members of the division joining in expending the necessary effort to keep their own quarters in order.

Yours truly,

CHARLES LUNA, *President.*

EXHIBIT No. 18

Unapplied awards—N.R.A.B.

1ST DIVISION

Award No.	Railroad	Claim date	Date of award	Amount involved [1]
11929	Northern Pacific	Sept. 20, 1940	Feb. 26, 1948	$160.00
17646	San Diego & Arizona Eastern	Dec. 30, 1954	Oct. 2, 1956	5,544.00
18720	Louisville & Nashville	Feb. 15, 1956	May 14, 1958	10,392.00
19031	Central of Georgia	May 13, 1953	Jan. 20, 1959	30,086.94
19235	Steelton & Highspire	Oct. 11, 1957	June 15, 1959	None
19276	Texas & Pacific	Oct. 14, 1957	July 22, 1959	8,316.00
19286	Atlantic Coast Line	Dec. 18, 1956	Aug. 6, 1959	14,784.00
19287	do	Sept. 30, 1957	do	7,500.00
19288	Pittsburgh & Ohio	June 12, 1958	do	5,236.00
19372	Denver & Rio Grande Western	June 5, 1952	Dec. 17, 1959	[2]
19389	do	Aug. 7, 1952	Jan. 20, 1960	[2]
19553	Louisville & Nashville	Nov. 11, 1958	Aug. 4, 1960	9,702.00
19744	Delaware Lackawanna & Western	May 20, 1958	Dec. 16, 1960	12,276.00
19862	Louisville & Nashville	Jan. 9, 1959	Feb. 17, 1961	9,350.00
19953	New York Central-Southern	Jan. 4, 1955	June 6, 1961	37.00
19979	Des Moines Union	June 2, 1953	July 21, 1961	288.00
19980	do	Sept. 25, 1953	do	40.00
20007	Southern	Sept. 29, 1958	Sept. 13, 1961	13,464.00
20023	Central of Georgia	May 12, 1959	Oct. 4, 1961	11,484.00
20071	Hudson & Manhattan	Dec. 14, 1958	Jan. 16, 1962	17,094.00
20174	Central of Georgia	Feb. 11, 1958	July 6, 1962	20,988.00
29261	Chicago, Milwaukee, St. Paul & Pacific-Eastern	May 12, 1961	Apr. 2, 1963	25,000.00
20291	Florida East Coast	Mar. 4, 1960	May 24, 1963	12,617.00
20371	Southern	Aug. 30, 1960	Nov. 3, 1963	15,144.00
20430	New York Central & St. Louis-Wheeling & Lake Erie	May 11, 1957	Apr. 16, 1964	14.60

2D DIVISION

3602	Central of Georgia	Apr. 5, 1958	Dec. 5, 1960	[2]
3746	Pennsylvania Railroad	Oct. 13, 1958	June 12, 1961	[2]
3747	Chesapeake & Ohio	May 25, 1959	June 12, 1961	[2]
3832	Southern Railway	Dec. —, 1958	Sept. 20, 1961	[2]
3864	Missouri-Kansas-Texas	Feb. 10, 1959	Nov. 3, 1961	75.00
3896	Pennsylvania Railroad	July 5, 1956	Dec. 18, 1961	[2]

3D DIVISION

548	Railway Express Agency	[4]	[4]	[4]
4253	Pullman Co.	[4]	[4]	[4]
4734	Missouri Pacific Lines in T. & L.	[4]	[4]	[4]
4735	Missouri-Kansas-Texas	[4]	[4]	[4]
5014	do	[4]	[4]	[4]
6116	Atlantic Coast Line	[4]	[4]	[4]
7862	Alabama Great Southern	[4]	[4]	[4]
8040	Missouri-Kansas-Texas	[4]	[4]	[4]
8657	Delaware & Hudson	[4]	[4]	[4]
8661	do	[4]	[4]	[4]
8704	Missouri-Kansas-Texas	[4]	[4]	[4]
8710	Atlantic Coast Line	[4]	[4]	[4]
8773	New York, New Haven & Hartford	[4]	[4]	[4]
8891	Union Terminal	[4]	[4]	[4]
9002	Missouri-Kansas-Texas	[4]	[4]	[4]
9505	Texas & Pacific	[4]	[4]	[4]
9507	Chicago, Milwaukee, St. Paul & Pacific	[4]	[4]	[4]

See footnotes at end of table.

Unapplied awards—N.R.A.B.—Coninued

3D DIVISION

Award No.	Railroad	Claim date	Date of award	Amount involved [1]
9647	Southern Railway	(4)	(4)	(4)
9761	Midland Valley	(4)	(4)	(4)
9849	Missouri-Kansas-Texas	(4)	(4)	(4)
9988	Union Pacific (S.C.D.)	(4)	(4)	(4)
10074	Atchison, Topeka & Santa Fe (E)	(4)	(4)	(4)
10075	Missouri-Kansas-Texas	(4)	(4)	(4)
10101	Pullman Co	(4)	(4)	(4)
10139	New Orleans & Northeastern	(4)	(4)	(4)
10192	Southern Pacific (P.L.)	(4)	(4)	(4)
10195	Missouri-Kansas-Texas	(4)	(4)	(4)
10196	do	(4)	(4)	(4)
10395	Tennessee Central	(4)	(4)	(4)
10396	do	(4)	(4)	(4)
10397	do	(4)	(4)	(4)
10578	Pullman Co	(4)	(4)	(4)
10616	do	(4)	(4)	(4)
10687	do	(4)	(4)	(4)
10733	do	(4)	(4)	(4)
10734	do	(4)	(4)	(4)
10735	Missouri Pacific (Gulf district)	(4)	(4)	(4)
10745	Pullman Co	(4)	(4)	(4)
10747	do	(4)	(4)	(4)
10820	Chicago, Rock Island & Pacific	(4)	(4)	(4)
10823	Norfolk & Western	(4)	(4)	(4)

[1] Accurate information not available. Where amount is shown, we have taken average rates and computed the amounts on these figures:

Occupation:	*Monthly rate*
Engineer	$462.00
Fireman	396.00
Conductor	374.00
Trainman	341.00
Yardman	396.00
Hostlers	352.00

These figures must take into consideration days off, the 5-day week, holidays and vacations.
[2] Unable to determine amount of money.
[3] No money involved.
[4] Data omitted because of lack of accurate records.

NOTE.—Referees participated in all cases shown.

Mr. STAGGERS. That concludes our hearing, and we will stand in adjournment until 10 o'clock tomorrow morning.

(Whereupon, the subcommittee recessed, to reconvene at 10 a.m., Wednesday, June 9, 1965.)

RAILWAY LABOR ACT AMENDMENTS RELATING TO NRAB

WEDNESDAY, JUNE 9, 1965

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 2218, Rayburn House Office Building, Hon. Harley O. Staggers (chairman of the subcommittee) presiding.

Mr. STAGGERS. The subcommittee will please be in order.

Hearings are continuing today on H.R. 701, H.R. 704, and H.R. 706.

These bills are designed to deal with the problem of long delays in the settlement of cases before the National Railroad Adjustment Boards.

As I mentioned in my opening remarks yesterday, the air transport industry's labor relations are governed by title II of the Railway Labor Act, except that the industry does not have machinery similar to the Adjustment Board. The law permits the establishment of such a board if the parties themselves do not, in their own collective bargaining agreements, provide grievance settlement machinery.

It occurred to me that it might be helpful to the subcommittee at this point in the record to hear from the Air Transport Association concerning their procedures, since this may throw some light on the problems occurring in the railroad industry. For this reason, I have written to the Air Transport Association requesting that they send a witness to testify today to explain procedures generally followed in the air transport industry for the settlement of so-called minor disputes. I will include in the record of the hearings at this point the letter which I referred to.

(The letter referred to follows:)

JUNE 3, 1965.

Mr. LEO SEYBOLD,
Air Transport Association,
Washington, D.C.

DEAR LEO: The Subcommittee on Transportation and Aeronautics will hold hearings on June 9 and 10 on H.R. 701, H.R. 704, and H.R. 706—bills amending the Railway Labor Act with respect to the settlement of disputes growing out of grievances or out of the interpretation or application of collective bargaining agreements in the railroad industry.

There are long delays in the settlement of cases referred to the National Railroad Adjustment Board. The subcommittee will be interested in finding out the reasons for these delays and will attempt to see to it that these delays are eliminated. It is my understanding that in the air transport industry, whose labor relations are governed by title II of the Railway Labor Act, disputes of this nature are handled very promptly, and that there has never been a

backlog of unadjusted disputes of any sizable proportion in the air transport industry.

It will be very helpful to the subcommittee if you will send a witness to testify on Wednesday, June 9, before the subcommittee to explain generally to the committee the procedures followed in the air transport industry for settlement of disputes between the employees and carriers growing out of the grievances or out of the interpretation or application of collective bargaining agreements.

Thank you for your cooperation.

Sincerely yours,

HARLEY O. STAGGERS,
Member of Congress,
Chairman, Subcommittee on
Transportation and Aeronautics.

Mr. STAGGERS. Pursuant to my request, Mr. Joseph O'Brien is here today to testify on behalf of the Air Transport Association. We want to welcome you to the committee, Mr. O'Brien, and you may proceed as you choose.

STATEMENT OF J. L. O'BRIEN, VICE PRESIDENT, AIR TRANSPORT ASSOCIATION OF AMERICA; ACCOMPANIED BY DAVID L. DOUGHTY, COUNSEL TO PERSONNEL RELATIONS CONFERENCE

Mr. O'BRIEN. Mr. Chairman, members of the subcommittee, my name is Joseph L. O'Brien. I am vice president of the Air Transport Association which is composed of virtually all the regularly scheduled airlines of the United States.

Mr. Chairman, I am accompanied today by David L. Doughty, who is counsel to the Personnel Relations Conference.

I am responsible for the operation of that segment of the association known as the Personnel Relations Conference which is comprised of personnel and industrial relations officials of each carrier member of the association.

This conference serves two basic purposes, the first being to conduct a program of advisory and informational services for the benefit of carrier industrial relations and personnel officials. The second is to provide a forum for the discussion, exchange and consideration of industrial relations and personnel ideas, policies and developments.

I am appearing here today on behalf of the association in response to your letter dated June 3, 1965, requesting us to explain generally the procedures followed in the airline industry for the settlement of disputes between employees and carriers growing out of grievances under existing collective bargaining agreements.

Pending before the subcommittee are three bills which would amend the Railway Labor Act, H.R. 701 and H.R. 706 would provide for the establishment of special adjustment boards to resolve disputes otherwise referable to the National Railway Adjustment Board. H.R. 704 would make all awards of the National Railroad Adjustment Board final and binding. The Air Transport Association takes no position with reference to these bills as we have had no direct experience with the workers of the NRAB. Our statement is confined directly to the airline industry.

The airline industry was placed under the Railway Labor Act in 1936 by enactment of title II, which made all provisions of that act, other than those relating to the National Railroad Adjustment Board,

applicable to the airlines. The air carriers operate under section 204 of title II, which provides in pertinent part:

> It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title, 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 3, title I, of this act.

Thus, the air carriers and their employees, acting through their representatives, were placed under the statutory duty of establishing and utilizing system, group, or regional boards of adjustment, for the purpose of deciding grievances arising under existing contracts. Pursuant to this statutory obligation, the carriers and their employees have entered into agreements for the establishment of appropriate boards of adjustment.

At this point, let me describe a typical airline system board of adjustment. Such an adjustment board conforms to the basic requirements found in the labor agreements establishing such boards for employees who have union representation on the U.S. certificated air carriers. The procedures have evolved over the years through the collective bargaining process.

The contract provisions pertaining to the establishment of boards of adjustment generally commence with a definition of terms. A statement is then made that the board is established in compliance with section 204, title II, of the Railway Labor Act, as amended, for the purpose of adjusting or deciding disputes which may arise under the terms of the contract. The contracts generally require a four-member board, two of whom are selected by the union and two by the carrier. Adjustment board members serve from 1 year to the date of their appointment or until successors are duly appointed. Vacancies are filled in the same manner as provided for the selection and appointment of the original board members.

Generally, the board must consider any dispute properly submitted to it by the president of the union or the chief operating official of the company (or their duly designated representatives), when such dispute has not been previously settled in accordance with the terms provided for in the applicable labor agreement.

Appointment of members of the boards is required by the respective parties within 30 days of the date of the signing of the agreement establishing a board. The appointees then normally must meet within 45 days from the date of the signing of the agreement in the city in which the company maintains its principal offices. The board then selects a chairman and a vice chairman to serve for 1-year terms. These offices are filled and held alternately by union and company members of the board.

All disputes properly referable to the board for consideration are generally required to be addressed to the chairman. Such disputes in general terms are contract grievances which have been processed under preadjustment board procedures set forth in the applicable labor contracts but have not been resolved to the mutual satisfaction of the parties. It is standard procedure for five copies of each petition appealing a grievance to an adjustment board, including all papers and exhibits in connection therewith, to be filed with the chairman.

A copy of all documents submitted to the chairman must be furnished to the other party or parties. Each case submitted is required to show:

(1) Question or questions at issue;
(2) Statement of facts;
(3) Position of employee or employees; and
(4) Position of the company.

When possible, joint submissions are sought. However, if the parties are unable to agree upon a joint submission, then either party may submit the dispute and its position to the board. No matter may be considered by the board which has not been handled in accordance with the appeals provisions of the pertinent labor contract.

Upon receipt of notice of the submission of a dispute, the chairman sets a date for hearing at the next regular meeting of the board. If at least two board members consider the matter of sufficient urgency and importance, then a hearing can be set at such earlier date at such place as the chairman and vice chairman shall agree upon, but not more than 15 days after the request for meeting is made by the two said members. The chairman is then required to give the necessary notices in writing of such meeting to the board members and the parties to the dispute.

The parties to a dispute before the board may choose and designate whom they wish to represent them. Evidence may be presented either orally or in writing, or both. A majority vote of all members of the board is required to make a decision. Decisions of the boards so rendered in all cases properly referable to them are final and binding upon the parties.

When a deadlock occurs in a case submitted to a board, the contracts usually provide that the board shall endeavor to reach a decision, and failing in this, to endeavor to agree within 30 days upon a procedure for breaking the deadlock. If such deadlock is not broken within a prescribed time, then a procedure is usually set forth in the contract for the selection of a neutral referee to sit with the board of adjustment as a member thereof. If the parties cannot independently agree on a neutral, then provision is made for selection of a neutral by an independent agency. Decisions by the board so constituted for breaking deadlocks are final and binding.

Other points of interest concerning the system boards of adjustment in the airline industry are that the fees and expenses of neutrals are borne by the parties to the dispute; each of the parties assumes the compensation, travel expense, and other expenses of the board members which they select; each of the parties assumes the expenses of the witnesses which they call, and other expenses which may be incurred by the board as it is deemed necessary by the chairman and vice chairman acting jointly; and, the boards are required to maintain a record of all matters submitted for their consideration and of all findings and decisions made.

The adjustment boards which we have just described are typical in the airline industry. By agreement between some carriers and their employee representatives, however, different types of adjustment boards and board procedures are also in use.

For example, on some carriers, a neutral sits as a member of the Adjustment Board from the beginning of the Board proceedings. On

another carrier, the neutral may sit as a member of the Board at the inception of the proceedings, if parties mutually agree in a given case. Furthermore, one carrier recently established a procedure whereby the need for an oral presentation can be eliminated where both the union and the company agree to the facts in dispute. The Adjustment Board then can adjudicate or resolve the dispute on the basis of the written presentation of the parties.

These variations are noted in order to call attention to the fact that under the scheme of Adjustment Boards in the airline industry, there is much flexibility permitted in the establishment of such Boards. The employees acting through their duly chosen representatives can, with a given carrier, negotiate the creation of a board tailored to the particular needs of the group of employees involved. No rigid format for all employees and companies throughout the industry is required. In the airline industry, each craft or class of employees on a carrier normally has its own Adjustment Board with members of that class or craft sitting on the Board. These two factors (1) being able to tailor a Board to the needs of a specific group of employees on a given carrier, and (2) the fact that employee representatives on the Boards are from the craft or class on which a grievance may arise, contribute in large measure to the success of Adjustment Boards in the airline industry. The flexibility which exists and having Board members with firsthand knowledge of the type of grievance involved, serve to expedite cases and minimize delays in grievance processing so as to avert a backlog of unresolved cases.

As for the time which is required in the airline industry to process cases before Adjustment Boards, we do not have precise figures. However, our overall experience indicates that most cases are concluded within 4 to 12 months. In considering the time element involved, we call your attention to the fact that by the terms of most air carrier labor contract, Adjustment Boards sit only twice a year. Cases are saved for the regular meeting unless there are circumstances requiring immediate action. Although this contributes in some delay, it is minimal and, on the overall, believed to be insignificant. It does not detract from the success which the Boards have had in the speedy resolution of grievances which arise under collective bargaining agreements.

With reference to the number of grievances initiated in a given year under various labor contracts, and the method by which they are resolved, exact statistics are not available. However, the association, on a periodic basis, conducts a survey of grievance actions. The last study covered the year 1963, but we believe the figures are typical for other years.

On the basis of such studies, we estimate that in a typical year around 4,000 grievances are initiated within the airline industry. Of this number, approximately 90 percent are resolved in the grievance procedures under the applicable contracts prior to their reaching the system board level. This, we believe, demonstrates an extremely successful record in efficient and equitable grievance processing. As for the remaining 400 or 10 percent of the grievances which are taken to boards of adjustment, we would estimate that 160 or 4 percent of the total initiated are resolved by Adjustment Boards without the use of a neutral, and 240, or 6 percent of the total, with a neutral.

Breaking the above statistics down by classifications of employees (the numbers have been rounded off) the association's 1963 study showed, and again, we believe these would be typical figures in recent years, that for flight deck employees, 350 grievances were initiated; 60, or 17 percent, were decided by system boards without a neutral, and 45, or 13 percent, were by system boards with a neutral. Flight attendants accounted for 150 grievances being initiated with 30, or 20 percent, decided by system boards without a neutral and 15, or 10 percent, with a neutral. Mechanics and related employees initiated 3,500 grievances, of which 95, or 3 percent, were resolved by system boards without a neutral and 190, or 5 percent, were with a neutral.

In conclusion, let me reiterate that we take no position with reference to the specific bills before the subcommittee since they are applicable only to the railroad industry. With reference to the airline industry's experience in the settlement of grievances under existing collective bargaining agreements, the existing system boards of adjustment procedures, or variations thereof, have proved and are proving to be satisfactory in achieving the Railway Labor Act's legislative goal of prompt and orderly disposition of such disputes.

Thank you, Mr. Chairman.

Mr. STAGGERS. Thank you, Mr. O'Brien, and I want to thank you very kindly for taking the time to respond to our invitation to come and give us the benefit of your views. The reason we extended this invitation is that we are considering these problems which do affect the railroad industry and which we recognize are not the same problems you have. But we want to—these figures and the testimony that you have given I think will help the subcommittee a lot.

I want to thank you again.

Mr. Williams, any questions?

Mr. WILLIAMS. Thank you, Mr. Chairman.

Mr. O'Brien, judging from your statement, the methods employed by the airlines in resolving these disputes have apparently been very successful. While I did not notice in your statement whether you indicated there had been a backlog or not, apparently there is very little backlog.

Mr. O'BRIEN. There is none.

Mr. WILLIAMS. Are you familiar with the three bills that have been introduced, presently before the committee?

Mr. O'BRIEN. Well, familiar to the extent that I have read them. I can't say that I have studied them, because they do not relate to our industry.

Mr. WILLIAMS. It would appear to me on listening to your statement and in looking over these bills, that to some extent, at least, the enactment of these three bills would bring into action virtually the same type of procedures that are presently being followed by the airlines. Is that a fair statement or would you like to comment on it?

Mr. O'BRIEN. No, I don't think I am prepared to comment on that observation, Mr. Congressman, no, sir.

Mr. WILLIAMS. Thank you, sir.

Mr. STAGGERS. Mr. Devine?

Mr. DEVINE. Thank you, Mr. Chairman.

Mr. O'Brien, I think your statement adds immeasurably to the record. I was particularly impressed or interested in the statistics that appear on page 8 on the number of cases that have been resolved. In

the normal year approximately 4,000 with only 6 percent was it necessary to have resolved by a neutral. And in your breakdown, in your particular industry, the airlines, the flight deck employees was 13, attendants 10 and I guess mechanics are the easiest ones to get along with—they are down to 5 percent.

Mr. O'BRIEN. Yes, sir.

Mr. DEVINE. I notice, Mr. O'Brien, in section 205 of title II, when this was enacted about 25 or 30 years ago it provided for the establishment of a permanent National Air Transport Adjustment Board. Has such a Board ever been established?

Mr. O'BRIEN. No, Mr. Congressman. No such Board has been established.

Mr. DEVINE. Do you know why?

Mr. O'BRIEN. Because there is no need of it. Obviously, the record of the industry in terms of handling grievances has been such that the establishment of a National Air Transport Adjustment Board would serve no useful purpose. As a matter of fact, I might comment at this time, that this reference to the National Air Transport Adjustment Board in section 205 could well be deleted.

Mr. DEVINE. And I would take it, then, on behalf of your association that you would recommend an amendment to section 205 of the act?

Mr. O'BRIEN. Yes, sir.

Mr. DEVINE. Do you know whether or not your association has any other recommendation for amendments to the act? As long as we are attacking this problem I think we should have any other suggestions.

Mr. O'BRIEN. I don't care at this time to comment on that. But we do have some representatives from air carriers who may have some comments to make, either orally or in writing, as you or the committee would prefer.

Mr. DEVINE. Do you know, Mr. O'Brien, whether they have been called or are going to be called as witnesses today?

Mr. O'BRIEN. Not to the best of my knowledge, no, sir.

Mr. DEVINE. Mr. Chairman, you know who will be called as witnesses. But if these persons to whom Mr. O'Brien makes reference are not to be called as witnesses, perhaps if they have suggestions of amendments to the act, any suggestions may be admitted or offered for the record.

Mr. STAGGERS. Glad to have them and we will so stipulate.

Mr. DEVINE. Thank you, Mr. O'Brien.

Mr. STAGGERS. I want to thank you again. We are only searching for the truth in the matter on both sides. I want the committee to understand that you came only by invitation and not at any other request. We hope any other groups that are interested in either side of this may have the opportunity to come.

Thank you again, you and your whole association.

(The following letter was later received from Mr. O'Brien:)

AIR TRANSPORT ASSOCIATION OF AMERICA,
Washington, D.C., June 22, 1965.

HON. HARLEY O. STAGGERS,
Chairman, Subcommittee on Transportation and Aeronautics, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: This letter is in response to the interest of the Subcommittee on Transportation and Aeronautics expressed during the subcommittee hearings on June 9, in receiving additional recommendations, if any, for amend-

ment of the Railway Labor Act, prior to the closing of the hearings on H.R. 701, 704, and 706.

The subcommittee's concern for the betterment of labor relations under all aspects of the Railway Labor Act is appreciated. In keeping therewith, the Air Transport Association herewith submits three suggestions for amending the act. These suggestions are in addition to the one expressed on behalf of the association before the subcommittee on June 9, to wit, that section 205, title II, which pertains to the establishment of a National Air Transport Adjustment Board, be deleted. They are as follows:

(1) Supervisors and other management personnel should not be considered as employees for organizational purposes under the Railway Labor Act; rather they should be excluded to the same extent as they are under the National Labor Relations Act;

(2) In employee representation elections conducted by the National Mediation Board, the Board should be required to provide an appropriate space on the ballots used to enable employees to cast a definite affirmative vote for "no union"; and

(3) Air carriers as employers should, as a matter of right, be entitled to participate in representation proceedings and class or craft determinations before the National Mediation Board.

Concerning item (1), we believe that the national labor policy, as expressed in the National Labor Relations Act with reference to supervisory personnel, should be made consistent. The Railway Labor Act should treat supervisors as they are throughout industry in general with reference to organizational rights. For example, persons having authority to hire, discharge, direct, discipline, or take certain other personnel actions with respect to other employees, or effectively to recommend such action, where the exercise of such authority requires the use of independent judgment, and the conduct of such persons with respect to unions may, under some circumstances, be imputed to the employer, should be considered as supervisors and not considered as employees for organizational purposes.

Persons acting for employers in dealings with a bargaining agent for employees or in relation to rank and file employees, have a potential conflict of interest created for them where they are considered employees subject to unionization but are responsible for the administration of management personnel policies.

With reference to items (2) and (3), the airline industry has taken the position that the National Mediation Board employee representation practices are not in keeping with the policy expressed by the Congress in the Railway Labor Act. The ballot now used is not a fair measure of employee choice in representation matters, and denying carriers the right to participate in craft or class determinations ignores the fact that the airline industry, insofar as crew complement and other issues are presented, has a definite realistic stake in election procedures and class or craft determinations. We respectfully submit that your subcommittee review the situation with reference to the indicated representation election practices of the National Mediation Board.

The suggestions contained herein are not all-inclusive but they have been under active discussion in the industry for some period of time. The opportunity to express our opinions in regard to these matters is appreciated.

Very truly yours,

J. L. O'BRIEN, *Vice President, Personnel Relations.*

Mr. STAGGERS. Our next witness will be Mr. J. E. Wolfe, chairman of the National Labor Conference, and his associates.

Do you have any associates that you want with you here?

Mr. WOLFE. Only those behind me.

Mr. STAGGERS. Would you identify them before you start? I might say that the House goes into session at 11 o'clock today. So we will have to stop at that time or soon after that. We will try to arrange a meeting for 2 o'clock and we should know soon after we go to the House floor.

Mr. WOLFE. I will be back.

Mr. STAGGERS. We will know soon after we go into session. We will let you know or the clerk of the committee know so that he can inform you as soon as we know whether we will be able to sit this

afternoon during general debate. If we can, we hope we can get through with your testimony, if that is satisfactory with you.

Mr. WOLFE. Yes; I want to have an opportunity to present my testimony.

Mr. STAGGERS. I am sure you do and we want you to have sufficient time.

Mr. Wolfe, we will try in every way to see that that is done. You may identify yourself and the ones who are with you.

STATEMENT OF J. E. WOLFE, CHAIRMAN OF THE NATIONAL RAILWAY LABOR CONFERENCE; ACCOMPANIED BY J. R. WOLFE, AND C. I. HOPKINS, JR.

Mr. WOLFE. My name is James E. Wolfe. I am chairman and chief executive officer of the National Railway Labor Conference. As chairman I act as spokesman for the regional carriers' conference committees in the handling of major labor controversies at the national level, and have related duties and responsibilities. I appear before you on behalf of the members of the National Railway Labor Conference, which comprise virtually all of the class I railroads of the United States and together constitute more than 90 percent of the railroad industry.

I entered the service of the Chicago, Burlington & Quincy Railroad Co. in the spring of 1918 as a coal chute laborer at Hannibal, Mo.

In June 1957, I became vice president in charge of personnel of the Burlington system, which position I held until November 1961, when I became chairman of the Committee on Labor Relations of the Association of Western Railways and chairman of the Western Carriers' Conference Committee.

From 1952 until my appointment to my present position, I served as a member of all western carriers' conference committees handling concerted national and regional wage and rules movements.

I also served on several national arbitration boards and on December 22, 1960, I was appointed by the President of the United States as a member of the Presidential Railroad Commission. I served as a member of that Commission and as spokesman for the carrier members of the Commission until it completed its work and was dissolved pursuant to the order of its creation on March 26, 1962.

I also was a member of Arbitration Board No. 282, created pursuant to Public Law 88–108, approved August 28, 1963, to dispose of manning issues involved in the national rules dispute with the unions representing railroad operating employees; and I have acted as spokesman and chief negotiator for the carriers in the handling of all of the various elements of that dispute.

In addition to my position as chairman of the National Railway Labor Conference, I am chairman of the carriers territorial committees for the National Railroad Adjustment Board. These combined committees constitute the administrative group which acts for rail management in appointing carrier board members and generally exercises supervision over carrier adjustment board matters as contemplated by section 3 of the Railway Labor Act.

During the many years I have had responsibilities in the field of railroad employee relations, I have been directly concerned with the

administration, operation, and performance of the National Railroad Adjustment Board. Of continuing and growing concern to me, and to those I represent as chairman of the National Railway Labor Conference and of the carriers' territorial committees for the National Railroad Adjustment Board, has been the backlog of cases accumulating on the first and third divisions of the adjustment board.

We have studied this situation thoroughly in order to isolate the sources of the problem and to fix upon methods of meeting and overcoming these problems. Some of the programs which have been initiated as a result of these efforts are now bearing fruit, as will be developed later in my testimony.

Other of our efforts in this direction have not met with success because in the last analysis there can be no voluntary solution to the backlog problem which does not proceed from a cooperative spirit on the part of both labor and carrier interests. In the course of proceedings before your subcommittee I believe you will find as I have that, regrettably, this cooperative spirit is lacking on the part of some—though by no means all—of the railroad labor organizations. Where the will to pursue a remedial program has been genuine, the results have been most gratifying. Where this will has not been present, we have found the backlog problem worsening instead of improving.

In this testimony which I present on behalf of the carrier members of the National Railway Labor Conference, I will summarize the reasons why the amendments to the Railway Labor Act proposed in H.R. 701, 704, 706 are neither necessary nor desirable in the judgment of the carriers. In addition to my testimony we have submitted to your subcommittee the statements and exhibits of W. L. Burner, Jr., W. S. Macgill, E. T. Horsley, and T. F. Strunck. These materials provide additional information and data supporting the conclusions I will express in the course of this testimony. At this point, Mr. Chairman, I respectfully request that the testimony, the written testimony of the four people whom I have just named be admitted to the record.

Mr. STAGGERS. They will be admitted into the record at this point.

(The four statements referred to follow:)

STATEMENT OF W. L. BURNER, JR., SECRETARY-TREASURER AND ASSISTANT DIRECTOR OF RESEARCH, NATIONAL RAILWAY LABOR CONFERENCE

I am William L. Burner, Jr., secretary-treasurer and assistant director of research of the National Railway Labor Conference. My office is in the Union Station Building in Chicago and my home is in Glenview, Ill.

Prior to assuming the duties of my present position on October 1, 1963, I was manager of the Bureau of Information of the Southeastern Railways, which was located in Washington, D.C. I entered railroad service with the bureau in 1940, following my graduation from Washington and Lee University, and served it successively as examiner, statistician, secretary and manager. In those capacities I have been closely associated with labor relations developments in the railroad industry, and my duties have included keeping in touch with the work of the National Railroad Adjustment Board. For example, while I was manager of the bureau, I was secretary of the Southeastern Committee for the National Adjustment Board, concerning which I shall have more to say later.

INTRODUCTION

Nature of railroad presentation.—My appearance before your committee is on behalf of the railroads of the United States, which are required by the Railway Labor Act to participate in the selection of members of the National Railroad

Adjustment Board and to compensate the members they select, and which are vitally affected in their labor relations by the decisions of that Board. More particularly, I speak for railroads which are members of the National Railway Labor Conference, which was organized early in 1963 to assist railroads in the development of sound labor relations and to coordinate their labor relations activities.

As outlined in Mr. Wolfe's statement, my part of the railroad's presentation will be to introduce certain background information relating to the development and activities of the National Railroad Adjustment Board and certain statistics as to its performance and the present status of its work. The railroads are opposed to H.R. 701, 704, and 706, as fully set out in Mr. Wolfe's statement. The background and statistical data in my statement and exhibits underlie that conclusion.

The railroad industry has probably the longest history of collective bargaining of any major industry in the United States. Certainly its collective bargaining relationships have been subject to control by Federal law for a longer period than those of any other industry. For more than 75 years, Federal laws have provided procedures for the resolution of collective bargaining disputes between railroads and their employees.

The reason for this long and continuing concern of the Congress with the collective bargaining relations of railroads and their employees is not difficult to find. Unlike most industries, the railroad industry is one which is vital not only to the economic health of the American Nation but also to the physical well-being of its people—in fact, to their day-to-day necessities of life. The essential position which the railroad industry occupies, and the compelling necessity for its uninterrupted operation, have been so many times made clear to the Congress, and Congress has recognized it in so many enactments, that it is not necessary for me to burden the record of this committee by piling proof of that fact on the proof which has already been presented. It is recognized in the first of the general purposes stated in the Railway Labor Act: "To avoid any interruption to commerce or to the operation of any carrier engaged therein."[1] I urge you to keep that fundamental fact in mind in considering the problems of the National Railroad Adjustment Board.

Nature of railway labor disputes.—Before I outline the history of the legislation which led to the creation of the National Railroad Adjustment Board, I will indentify the types of disputes which it was created to deal with. Controversies between railroads and their employees fall into two broad categories which differ in essential respects. The first category has to do with the making of agreements, and with changes in agreements once made. This includes requests for increases (or decreases) in rates of pay, and proposals for changes in work rules such as those bearing on application of the rates of pay, those which set forth hours of work and working conditions, those which require the use of specified personnel, those which establish procedures for the handling of discipline matters, and many others. The function of making the agreements which specify the conditions under which employees will work, their rates of pay, and the like, has been likened to the legislative process by which laws are made. As applied to collective-bargaining relationships, disputes growing out of requests for changes in agreements have come to be known, in the railroad industry, as major disputes.

The other broad category of disputes between railroads and labor organizations representing their employees has to do with the day-to-day application of agreements, once made, and with individual grievances which arise in the presence of agreements. These disputes involve such matters as whether one rate of pay rather than another should apply to a certain job, or whether one employee rather than another should be used on a certain occasion, or whether an employee has been unjustly treated in the imposition of discipline or otherwise. Such a dispute would not involve a request for the establishment of a new rate of pay, but might involve the contention of a labor organization that a certain rate of pay which has already been established in an agreement should apply to a certain task, rather than the rate of pay which the railroad actually paid for the task. Inasmuch as disputes in this category are to be decided within the terms of agreements that are already in existence and do not involve the making of new agreements, the function of deciding them has been likened to the judicial process. As applied to collective bargaining relationships, disputes

[1] Railway Labor Act as amended, sec. 2(1).

growing out of the interpretation or application of existing agreements, or out of grievances, have come to be known in the railroad industry as minor disputes. This does not mean that such disputes are never important or never involve considerable sums of money; the term "minor disputes" is merely a convenient label to use in distinguishing claim and grievance disputes from disputes involving the making of new agreements or the revision of existing agreements.

The National Railroad Adjustment Board was established to deal with only disputes of the latter category—the so-called minor disputes. Accordingly, when I discuss the history of laws which led up to the establishment of the Adjustment Board, my discussion will be in terms of the provisions of those laws that have to do with minor disputes, even though the same laws have had substantial bearing on the handling of major disputes as well.

Disputes arising out of claims or grievances, even though conveniently called minor disputes, are of definite importance not only to railroad employees but also to railroad management and to the public. The employees must be assured of proper application of the agreements which their representatives have negotiated. The railroads on their part must have assurance that when they have negotiated an agreement under the procedures of sections 5, 6, 7, 8, and 10 of the Railway Labor Act they may rely on that agreement as setting forth their obligations and not be faced with harassment to bring about what is, in effect, a substantive change even though it may be sought under the guise of a mere change in application of the agreement. This is, of course, subject to the necessity for informed and impartial rulings as to the meaning of agreements in cases in which the parties to the agreement do not concur in what the agreement means. So far as both the railroads and the employees are concerned, interpretations which have been placed on agreements have at times had major effects on the provisions of agreements, as great as if such interpretations were, in fact, changes in agreements. The public is concerned, because it must be protected against interruptions in railroad service which might occur if there were no peaceful means for deciding disputes as to application of agreements, or claims under agreements, or grievances, and the use of economic force were the final arbiter. For all of these reasons, machinery for interpreting and applying agreements has a tremendously important part in the handling of labor relations as between railroads and their employees.

LAWS PRIOR TO 1934 AFFECTING RAILROAD LABOR RELATIONS

Act of 1888.—The first of the Federal laws regulating the conduct of railroad labor relations was the act of October 1, 1888, which was enacted a year after the Interstate Commerce Act became law. It had its background in severe railroad strikes which had taken place in 1876 and 1877, which had resulted in widespread disorder, considerable loss of property and much inconvenience to the public. It contained two provisions which have been carried forward and are key provisions in the present Railway Labor Act. The first was for voluntary arbitration of labor disputes, and the second was for investigation of labor controversies by commissions appointed in each case by the President of the United States.

The Act of 1888 did not distinguish between "major disputes" and "minor disputes," and its arbitration provisions differed from those presently applicable in two important respects. Arbitration was available on the suggestion of either party to a controversy, provided both parties to the controversy agreed to arbitration. It then became incumbent upon each party to name an arbitrator, and the two arbitrators thus selected had the duty of agreeing upon a third or neutral arbitrator. Up to this point there has been no fundamental change since the act of 1888 in the arbitration machinery. The act of 1888, however, stopped at that point. It contained no provision for appointment of a neutral arbitrator in case the two party arbitrators did not agree on such an appointment. Further, the awards of arbitrators under the act of 1888 had no binding legal effect. As I will point out in a moment, both in respect of the effect of arbitration awards, and in respect of appointment of neutrals, the laws subsequently enacted—and particularly the law setting up the National Railroad Adjustment Board—represent the further development of the mechanics of voluntary arbitration.

Although arbitration procedures such as I have outlined were appropriate for the determination of disputes as to the interpretation of agreements, as well as disputes arising out of desire to change agreements or to make new agreements, the arbitration provisions of the act of 1888 were never utilized. The provisions

for investigation of controversies by commissions appointed by the President of the United States were utilized in connection with the Pullman strike in 1894—but that situation is not relevant to the issues now before this committee.

Erdman Act (1898).—The next law regulating the handling of railroad labor disputes was the Erdman Act, which became law in 1898. It preserved the arbitration features of the act of 1888, with additional provisions along the two lines I indicated a moment ago. The first such provision was to assure the appointment of a neutral arbitrator. In case the party arbitrators could not agree on the selection of a neutral within 5 days, the neutral was to be appointed by joint action of the Chairman of the Interstate Commerce Commission and the Commissioner of Labor. The second additional provision had to do with enforcement of arbitration awards. Although arbitration was still a matter to be entered into voluntarily, the Erdman Act provided that once the parties had accepted arbitration, the award of the arbitrators might be enforced by a decree of a Federal court sitting in equity. Both the provision of an arrangement for appointment of neutral arbitrators and the provision for judicial eforcement characterizes the arbitration arrangements which are available today under the Railway Labor Act, not only for major disputes but also, through the National Railroad Adjustment Board, for minor disputes.

The Erdman Act contained a new provision for mediation, upon application by either party to a controversy, which replaced the Presidential commissions of inquiry which had been provided for by the act of 1888. That provision, as well as the developments under the Erdman Act in which arbitration agreements were entered into for the settlement of major disputes, lie outside the field of your present inquiry, because they have to do with major disputes rather than the minor disputes which your committee is concerned with.

Newlands Act (1913).—The third Federal law regulating railroad labor relations was the Newlands Act, which was passed in 1913 and amended the Erdman Act. It made two changes in the arbitration provisions of the Erdman Act, permitting arbitration boards to be established consisting of six members rather than the three members available under the Erdman Act, and providing that boards of arbitration must limit their decisions to the issues involved in the case immediately before the Board. Those provisions are important ones which are retained in the Railway Labor Act, although they are perhaps less innovational in character than were the keystone provisions of the Erdman Act which I discussed a moment ago.

The Newlands Act established the U.S. Board of Mediation and Conciliation, a forerunner of the present National Mediation Board. Its function was primarily in relation to major disputes.

Period of Federal control (1917–20).—The next development in relation to handling of railroad labor matters under Federal Government regulation occurred during the period of World War I while the railroads were under Federal control. This extended from December 26, 1917, to March 1, 1920, slightly more than 2 years, but the precedents developed during that relatively brief period, not only in the matters of labor organization of employees and the extension of labor agreement rules but also in the procedures for handling of disputes, continue to exert a tremendous influence.

The disputes-handling machinery was set up in three Boards of Adjustment which were established in 1918 on a bipartite basis. Board of Adjustment No. 1, which was established March 22, 1918, had jurisdiction with respect to disputes concerning the four brotherhoods representing engine and train service employees: Engineers, firemen, conductors and trainmen. (These four brotherhoods had been founded prior to 1880. The Switchmen's Union of North America, which was organized in 1894, was less than 25 years old at the time of World War I, and during the war period disputes in which it was involved were referred to another of the Boards of Adjustment as I will mention in a moment.)

Board of Adjustment No. 1 had no jurisdiction over matters of changes in rates of pay or working practices, but was charged solely with the decision of disputes as to the interpretation of existing agreements and as to matters of discipline and other personal grievances. It consisted of eight members, four of them representing the railroads and four representing the brotherhoods. The four members representing the railroads were selected by the regional directors of the U.S. Railroad Administration which was the Agency for Federal Control, and were paid for their services by the railroads; the brotherhoods nominated their respective members.

Two other Boards of Adjustment were organized along similar lines later in 1918. Board of Adjustment No. 2 was established in May to handle disputes concerning the six shop crafts, and to afford bipartisan representation that Board consisted of 12 members, 6 nominated and paid by the railroads and 6 by the labor unions.

Board of Adjustment No. 3 was established November 13, 1918, and had jurisdiction over questions of interpretation and application of agreements between the railroads and their telegraphers, switchmen, clerks, and maintenance-of-way employees. It, like Board No. 1, consisted of eight members.

Each of the Boards of Adjustment functioned as a separate board, considering disputes involving the classes of employees within the jurisdiction of the particular board. This lineup of separate boards to handle disputes involving the respective classes of employees has continued to this day. Even the numbering of the boards is the same now as under the World War I setup, with the present First Division of the National Railroad Adjustment Board having jurisdiction over disputes involving engine, train and yard service employees (including now those represented by the Switchmen's Union of North America), just as Board of Adjustment No. 1 did during World War I; the Second Division has jurisdiction over shop employees, just as Board No. 2 did during World War I; and the Third Division of the Adjustment Board, like Board of Adjustment No. 3, has jurisdiction over clerks, telegraphers, maintenance of way employees, and certain others. The present National Railroad Adjustment Board has a Fourth Division which has jurisdiction over classes of employees not subject to the jurisdiction of any of the other three Divisions, which reflects the organization of other groups of employees which has taken place largely since World War I.

Probably more important than the establishment of separate boards of adjustment for each of the classes of employees was the fundamental separation which was recognized during Federal control of the procedures for handling disputes involving interpretation of existing agreements, claim and grievance type disputes, which have since come to be known as minor disputes, from disputes involving changes in existing agreements and the negotiation of new agreements which are now known as major disputes. Although this distinction, as well as the separation among employee classes for purposes of handling minor disputes, was to some extent blurred during the next few years, it was given renewed recognition when the Railway Labor Act was enacted in 1926 and it continues as a fundamental characteristic of the railroad labor disputes handling provisions.

Each of the Boards of Adjustment during World War I was a bipartisan board, consisting of employee representatives equal in number to the railroad representatives. A majority vote was required for decisions. To assure decisions in all cases, the organization of the boards provided that in case of deadlock a decision would be made by the Director General of Railroads. The provisions now in the Railway Labor Act for breaking deadlocks of the Divisions of the National Railroad Adjustment Board, although different in their form of operation from those of the World War I Boards of Adjustment, serve the same purpose.

Transportation Act of 1920.—Following the return of railroads to private operation after World War I, procedures for handling railroad labor relations were established by the Transportation Act of 1920. The labor disputes machinery of the Transportation Act of 1920 eventually bogged down because of weaknesses in the machinery itself, which have been corrected in the establishment and functioning of the National Railroad Adjustment Board.

Title III of the Transportation Act of 1920 contained its labor relations provisions. It is reproduced as exhibit A to this statement. Sections 302 and 303 provided for the establishment of adjustment boards, by voluntary agreements, to decide disputes "involving only grievances, rules, or working conditions" not disposed of by the parties. A variety of arrangements was provided for: Such boards could be limited to a single railroad, or could extend to a group of railroads, or could cover the railroads as a whole. On the employees' side, the boards could cover one labor organization or could be extended to cover groups of labor organizations.

When the Transportation Act of 1920 went into effect, the labor organizations pressed for the creation of a series of National Boards of Adjustment similar to those which had functioned under the Railroad Administration. Railroad managements, however, took the position that local or system boards should be established, as the act permitted, and were not willing to agree to national boards. Eventually, a number of system boards of adjustment were established under

the act, and for the engine and train service employees regional Train Service Boards of Adjustment were eventually created.

Section 304 of the Transportation Act of 1920 established the U.S. Railroad Labor Board. This Board consisted of nine members; although all of them were to be appointed by the President of the United States, three of them were to be appointed from a list of nominees submitted by the labor organizations and were regarded as the organization representatives, three members likewise constituted the management group, and three members were representatives of the public. The jurisdiction of the Railroad Labor Board was broad, in that it was empowered to decide disputes between a railroad or railroads and its or their employees involving demands for changes in wages, rules, or working conditions, as well as disputes involving the interpretation of existing rules and their application to specific cases. These "minor disputes" could reach the Railroad Labor Board on certification from one of the adjustment boards created under section 302, on the grounds that it was unable to reach a decision on the dispute within a reasonable time, and in situations in which no adjustment board had been set up under section 302 such disputes could be taken directly from the property to the Railroad Labor Board. This duality of function—extending to "major disputes" as well as to "minor disputes"—was one of the fundamental weaknesses which led to the eventual abandonment of the U.S. Railroad Labor Board.

Another weakness in the labor disputes machinery of the Transportation Act of 1920 was that no means were provided for enforcing decisions either of the U.S. Railroad Labor Board or of adjustment boards created under section 302. The only enforcement provision was through such pressure as public opinion might bring to bear on the parties to a dispute. In case the Labor Board had reason to believe that a decision was being violated by any railroad or railroad employee, it might, on its own motion and after due notice to all persons directly interested, determine whether in its opinion a violation had occurred, and make public its decision in such manner as it might determine. However, no penalty other than that of being caught in the spotlight of publicity was attached to violations of orders either of the Railroad Labor Board or of any board of adjustment.

This lack of enforcement provisions was the direct cause of the difficulties which the Railroad Labor Board later encountered. Acting under its jurisdiction to decide disputes growing out of demands for changes in agreements, the Railroad Labor Board rendered decision No. 2688 in 1924 in a dispute between western railroads, represented by the Regional Conference Committee of Managers, and their engineers and firemen. The decision granted a wage increase, responsive to demands of the employees, and rules changes responsive to the demands of the railroads. The brotherhoods representing the employees, which had raised objection to the Railroad Labor Board's proceedings, disregarded its decision and sought through economic pressures to impose their demands on individual railroads. They took a strike vote on one large railroad, induced management to resume negotiations, and eventually reached agreement under which the increase which the Railroad Labor Board had provided in decision 2688 was made effective but without rules changes which the same decision had provided responsive to the request of the railroads. The Conference Committee of Managers requested the Railroad Labor Board to set aside the settlement on the grounds that it had been forced from the railroad under threat of a strike against the decision of the Railroad Labor Board and was thus in disregard of the decision, but the Board declined to do so on the ground that the railroad was not legally bound by decisions of the Board and was free to make any settlement that it chose irrespective of the motives leading to the settlement. The Board expressly stated that as the law stood, labor organizations had the right to force an agreement by a strike and the railroad had the right to submit to such force.[2]

The Railroad Labor Board continued in operation for some time afterward, but with decreasing effectiveness, and a movement commenced in Congress looking toward abolition of the Board and revision of the law covering the handling of railroad labor disputes. The matter was dealt with in messages to Congress by President Harding in 1922, as well as by President Coolidge in two of his annual messages. The labor organizations particularly were in support of the move-

[2] These developments are outlined in Jones, Harry E., "Railroad Wages and Labor Relations, 1900–1952" (November 1953), pp. 82–85. Mr. Jones' book contains an excellent history of legislation during the period dealt with in this statement (up through 1952), and of collective-bargaining developments during the same period.

ment, and a bill known as the Howell-Barkley bill which embodied their views was introduced in 1924. That particular bill did not become law, but in 1926, as a result of negotiations between the labor organization chiefs and the Association of Railway Executives, a bill was agreed upon and was enacted a sthe Railway Labor Act. Today, almost 40 years later, that act continues to regulate collective-bargaining relationships between railroads and their employees. The act was substantially amended in 1934, particularly with respect to the matters which are now before this committee, but the 1934 amendments were built upon the foundation provided by the 1926 act and were in the light of experience under it.

Railway Labor Act (1926).—The Railway Labor Act of 1926 contained specific provisions for the handling of "minor disputes" which were separate from the procedures that were designed to deal with "major disputes." For major disputes it created the U.S. Board of Mediation, consisting of five members appointed by the President, with the authority to mediate any dispute between railroads and their employees at the request of either party or on motion of the Board. If unable to bring about settlement of a controversy, the Board of Mediation was required to use its influence to induce the parties to submit the dispute to arbitration, but the matter of whether arbitration would be utilized was left strictly on a voluntary basis and there was no obligation to agree to it. For situations in which no settlement of the dispute was reached through mediation and the parties did not agree upon arbitration, or if one of the parties refused to abide by the decision of the arbitrators, so that continuance of the controversy threatened substantially to interrupt interstate commerce, the Board of Mediation was required to notify the President of the United States, who was empowered to create an "emergency board" to make an investigation of the matter and report thereon to the President within 30 days; during pendency of the dispute, and extending to 30 days after the report of such an "emergency board," the parties to the dispute were forbidden to make any change, except by agreement, in conditions out of which the dispute arose.

Although the provisions which I have just outlined were, and are, particularly suited to the handling of major disputes, the act did not forbid their use in so-called minor disputes, which may in some cases reach substantial proportions. Such procedures were in fact utilized in the handling of minor disputes in a few important cases under the 1926 act. They continued to be utilized occasionally after the act was amended in 1934 and until about 10 years ago when there was clarification, through court decisions, of the exclusive nature of the procedure for handling so-called minor disputes.

As enacted in 1926, the Railway Labor Act provided with respect to the handling of minor disputes that "Boards of Adjustment shall be created by agreement between any carrier or group of carriers, or the carriers as a whole, and its or their employees."[3] Thus the Railway Labor Act carried forward the principle of the Transportation Act of 1920 that Boards of Adjustment would be set up by agreement, and were not created by the law itself, and the principle that they might be national, regional, or local as might be agreed upon. The language used indicates that the act undertook to make it obligatory upon railroads and labor organizations to reach agreements to set up such boards,[4] but the act provided no means to enforce the obligation.

While the Transportation Act of 1920 was in effect, three regional Train Service Boards of Adjustment had been created—one for each of the Eastern, Western, and Southeastern regions. In 1928 a fourth Train Service Board of Adjustment was created for the Southwestern region. These boards continued to function until 1935, when the National Railroad Adjustment Board went into operation under the 1934 amendments to the Railway Labor Act. During their lifespan the four boards rendered a total of 9,321 awards, as shown in exhibit C to this statement. Disregarding the first and last years of their operation, an average of 738 awards per year were rendered by all of the boards. This breaks down to an average of slightly less than 200 awards per board per year. Comparison will be made of these figures with the number of awards which the First Division of the National Railroad Adjustment Board was later to turn out.

The only statistics which I have seen as to the number of system boards created under the Transportation Act of 1920 or the Railway Labor Act of 1926 were presented in Dean Lloyd K. Garrison's address before the Academy of

[3] Sec. 3, first.
[4] Cf. Jones, Harry E., op. cit., p. 88.

Political Science on November 12, 1936, in which he stated that "some 300 regional and single system boards—chiefly the latter" were created.[5] The regional boards are the four Train Service Boards of Adjustment which have been mentioned.

No boards of adjustment were created on a regional basis with respect to other than the engine and train service employees, or on a national basis with respect to any employee groups. On a number of railroads System Boards of Adjustment were created, and functioned, to decide minor disputes involving other groups of employees, but the decisions of such boards carried no guarantee of finality, and there was no mandatory provision for the breaking of deadlocks. The result was that railroad employees were not assured of access to any tribunal which was empowered to determine the justness of individual employee grievances or whether railroads were properly applying collective bargaining agreements. Railroads on their part had no protection against the possibility of strike action to force them to apply agreements on bases which might differ from what the parties had in mind when the agreements were negotiated. And the public, on its part, was not protected against the possibility of interruptions to vital railroad service growing out of minor disputes as to grievances or as to the interpretation or application of existing agreements.

Conclusions from experience under laws prior to 1934.—Certain conclusions with respect to the handling of so-called minor disputes may be drawn from experience under railroad labor legislation prior to 1934. The first is that the Congress, quite properly, has been thoroughly aware of the public interest in uninterrupted railroad service. From the act of 1888 through the Railway Labor Act of 1926, Congress has taken great pains to provide means for the settlement of railroad labor disputes and thereby assure, to the extent possible through legislation, that unresolved labor disputes would not give rise to interruptions in railroad service. This principle was to be carried forward in the 1934 Amendments to the Railway Labor Act.

A helpful development in the earlier period of railroad labor legislation is the division of railroad employees into their broad functional groups for the purpose of handling minor disputes. Thus engine and train service employees were covered by Board of Adjustment No. 1 during the Railroad Administration, and under the Transportation Act of 1920 and the Railway Labor Act of 1926 Regional Train Service Boards of Adjustment were created to handle disputes involving those employees to the exclusion of other employees. Railroad shop employees engaged in the maintenance of rolling stock and equipment were under Train Service Board of Adjustment No. 2 during the Railroad Administration, and were generally subject to their own arrangements for grievance handling on individual railroads under the Transportation Act of 1920 and the Railway Labor Act of 1926. Similarly, clerks, telegraphers, and maintenance of way employees were under Board of Adjustment No. 3 during the Railroad Administration and their own disputes handling arrangements during the subsequent period. This separation was to be carried forward in the 1934 Amendments to the Railway Labor Act. It was responsive to the vast difference in pay structure, including both the rates of pay and the applicable rules, for engine and train service employees as compared with the other employee groups; and on the other hand the railway shop employees had considerable similarity among their working rules and pay bases, which made it feasible to set up a separate arrangement for them.

Another conclusion from history has been that some means must be provided for the breaking of deadlocks in bipartite tribunals. The necessity for neutral arbitrators and impartial factfinders is obvious in relation to negotiation of new agreements and the handling of changes in existing agreements, but the necessity for provision of neutral members is no less compelling even when agreements are in existence and the dispute turns on the application of an agreement. Given the utmost sincerity of the parties to a dispute, the very existence of the dispute demonstrates the possibility of different interpretations of the same controlling provision, or different views as to the application of an agreement to a given set of facts. The party members of a bipartite tribunal may be expected to, and do, approach problems in the light of the interests of the parties which appointed them. A neutral member of an adjustment board, like a judge having no personal interest in a proceeding before him, is essential to the proper handling of

[5] Quoted at p. 107 of book 2, "Historical Background and Growth of Machinery Set Up for the Handling of Railroad Labor Disputes," in compilation "Inquiry of the Attorney General's Committee on Administrative Procedure Relating to the National Railroad Adjustment Board," by H. E. Jones.

minor disputes. Settlement machinery which has included procedures for the breaking of deadlocks has been relatively successful in disposing of disputes, as compared with machinery otherwise similar but which has had no such procedures. The absence of such procedures in the Railway Labor Act of 1926 was one of the shortcomings of that act, a shortcoming which was rectified in the 1934 amendments.

A fourth lesson from history was that if tribunals were to be provided for the resolution of minor disputes, such tribunals must be set up affirmatively by law or by the Federal regulatory agency which derives its authority from law, and that it is not enough to rely on making the creation of tribunals an available matter for railroads and labor organizations to agree upon, or even imposing an obligation on railroads and labor organizations to create them. The arbitration provisions of the act of 1888 were never utilized. Not until the boards of adjustment were actually established by the Federal Government during World War I was there any assurance of a tribunal available to individual employees which could pass upon their claims or their grievances. After the war, the Train Service Boards of Adjustment were established regionally by the railroads and the labor organizations representing engine and train service employees, but the organizations were not successful in moving for the creation of boards of adjustment to handle disputes involving other employee groups on a regional, let alone a national, basis, and on many railroads not even on a system basis.

Finally, the history of railroad labor legislation prior to 1934 demonstrated the ineffectiveness of disputes-handling procedures which would not result in awards having finality, binding upon both parties to a dispute. The success of the boards of adjustment during World War I may be attributed in considerable measure to the wartime pressures for fulfillment of duties which had a patriotic aspect, and in further measure to the fact that the railroads were at that time under Federal control. But when Federal control terminated and the wartime pressures ended, the U.S. Railroad Labor Board foundered on its lack of any finality or binding effect; and the absence of finality and binding provisions was one of the recognized shortcomings of the Railway Labor Act of 1926. This shortcoming too was rectified in the 1934 amendments.

AMENDMENT OF THE RAILWAY LABOR ACT IN 1934

Developments leading to the 1934 amendments.—In the early 1930's, partly as an outgrowth of the serious financial condition confronting the railroads as a result of the industrial depression which began in 1929 and partly in keeping with the political situation which existed at that time, a number of legislative measures were taken which directly concerned the railroad industry. Among these were the addition of section 77 to the Bankruptcy Act of 1928 (which was accomplished in 1933), the Emergency Transportation Act of 1933, and the Railway Labor Act Amendments of 1934; a few years later came such other legislation affecting railroad employees as the Railroad Retirement Acts of 1934 and 1936 and the Railroad Unemployment Insurance Act of 1938. Other legislation during the same period included the Wagner Act and the Norris-La Guardia Act.

The Emergency Transportation Act of 1933, among other things, provided for the creation of the Office of Federal Coordinator of Transportation and for setting up coordinating committees from each of the three regions. It provided also for labor committees with which the Coordinator and the regional coordinating committees were to consult before taking any action affecting the interests of employees. President Roosevelt appointed Interstate Commerce Commissioner Joseph B. Eastman to the office of Federal Coordinator of Transportation, and in that office Mr. Eastman had considerable to do with preparation of the 1934 amendments to the Railway Labor Act.

During hearings on the 1934 amendments, Coordinator Eastman testified before both the Committee on Interstate Commerce of the U.S. Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives that—

"Because of the lack of adjustment boards in many situations and the tendency of those which do exist to deadlock, very disturbing conditions have at times been created, especially in recent months. In at least four important instances, strike votes have been taken for the purpose of creating an emergency which would justify the President in appointing a factfinding board, so that these grievances and similar controversies might be passed on by an impartial body.

In two of these instances the controversy was adjusted by the parties without the appointment of such a board, but in two others factfinding boards became necessary and were appointed." [6]

The railroads also recognized that the existing law failed to provide machinery for the prompt disposition of matters in controversy, particularly when the existing boards of adjustment became deadlocked.[7]

In view of the fact that the railway labor organizations were proponents of the 1934 amendments and particularly of the adjustment board feature, the comment of their spokesman as to their reasons for desiring creation of the National Railroad Adjustment Board deserves particular consideration. The spokesman was Mr. George M. Harrison, president of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express & Station Employees. On April 11, 1934, speaking for the 21 standard railway labor organizations including the 5 brotherhoods of engine, train, and yard service employees, Mr. Harrison pointed out that the proposed amendments left it open to the parties to agree on system or regional boards of adjustment or any other satisfactory method of disposing of minor disputes, but that if the parties did not enter into such agreements the machinery of the National Railroad Adjustment Board would have to be utilized. He used the following terms:

"Mr. HARRISON. That is right. In other words, we want to set up something that will be available, and hope that the parties will get together and establish something in its place.

"We have had experience for 14 years under these boards, and we hope that the committee will give us this national board, because if it is not approved and put into the law, we will be unable to work out satisfactory machinery by mutual agreement. The only reason we will be able to agree on other machinery is because we have this board set up by law that we can go to if we can't get an agreement on something else. It is a very troublesome problem and I just want to make this observation: These railway labor organizations have always opposed compulsory determination of their controversies. We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and which we have the right and privilege of entering into and have something to say about their terms, we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make.

"I just want to tie the tail on to the kite—if I may express it that way—that if we are going to get a hodgepodge arrangement by law rather than what is suggested by this bill, then we don't want to give up that right, because we only give up the right because we feel that we will get a measure of justice by this machinery that we suggest here." [8]

Mr. Harrison's statement indicates clearly that one of the primary objectives of the labor organization was to secure a national arrangement for compulsory arbitration of "minor disputes." The door was to be left open to voluntary arrangements through agreements on individual railroads on the creation of system boards of adjustment, or agreements with groups of railroads on the creation of regional boards of adjustment, but in the absence of such voluntary agreed-to arrangements the national board was to be set up. That it was to be available to either party is borne out by Mr. Harrison's use of the phrase "we can risk having our grievances go to a board and get them determined."

The new section 3.—Section 3 of the Railway Labor Act, as amended (approved June 21, 1934), is reproduced as exhibit D to this statement. The 1934 amendments carried forward, in section 3, second, but on an entirely permissive basis, the scheme of the 1926 Railway Labor Act for the establishment of system, group, or regional boards of adjustment.

The amended act carried forward unchanged the arbitration provisions of the 1926 act (secs. 7, 8, and 9) so that any particular dispute could at any time be submitted to arbitration through agreement. However, section 3, first of the

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[6] 73d Cong., Senate committee hearings on S. 3266, Apr. 10, 1934, p. 17 of printed transcript; House committee hearings on H.R. 7650, May 23, 1934, pp. 46–47 of printed transcript.

[7] See testimony of Mr. Martin W. Clement, vice president of the Pennsylvania Railroad Co. and chairman of the Committee of Railroads delegated to deal with proposed amendments to the Railway Labor Act, before the Senate Committee on Interstate Commerce, Apr. 12, 1934, particularly at pp. 55, 67–69, and 75–76 of the printed transcript.

[8] 73d Cong., hearings before Senate Committee on Interstate Commerce on S. 3266, pp. 34–35 of printed transcript.

amendments established the National Railroad Adjustment Board for the purpose of deciding minor disputes—"those growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions"—on a compulsory basis. Section 3, first (i) provided specifically that such disputes, after being handled in the usual manner on the property up to and including chief operating officer of the railroad designated to handle them, could if unsettled be "referred by petition of the parties or by either party to the appropriate division of adjustment board."

Aside from the innovational aspect of the establishment of a National Adjustment Board, there were two provisions of section 3, first, which corrected specific shortcomings of earlier procedures for the settlement of minor disputes which have been commented on above. One of these was the provision for breaking deadlocks between the party members of the board. Section 3, first (L) provides that in case of deadlocks a 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," with the National Mediation Board to designate the referee in case of failure of the party members of the division to do so. The other was the finality and enforcement provisions of the act, which Mr. Macgill discusses fully in his statement.

THE NATIONAL RAILROAD ADJUSTMENT BOARD

Jurisdiction.—The above comments which relate specifically to the innovational nature of the 1934 amendments to the Railway Labor Act and the defects in prior procedures which they rectified are not complete without an explanation of just what the National Railroad Adjustment Board consists of and how it functions, which is highly pertinent to the issues before your committee.

In the first place, the National Railroad Adjustment Board is not a board in any except an administrative sense. It consists essentially of four separate "divisions," each of which has jurisdiction over a specified sector of railroad employees. Jurisdiction is divided along lines marked out in the earlier history of adjustment boards which I have outlined. The first division has jurisdiction over disputes involving engine, train, and yard service employees. The second division has jurisdiction over disputes involving shop employees—those engaged in the maintenance of railroad rolling stock and equipment. The third division has jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance of way employees, clerical employees, freight handlers, express, station and store employees, signalmen, and the train attendant classes of sleeping car conductors, porters and maids and dining car employees. The fourth division has jurisdiction over disputes involving railroad employees who are engaged in water transportation, and all other railroad employees over whom jurisdiction is not given to the first, second, or third divisions.

Membership.—Except for the neutral referees who are appointed on a temporary basis, the members of the National Railroad Adjustment Board are not regarded as in any sense judges. Rather they, like the members of arbitration boards who are appointed by the parties to an arbitration agreement, are frankly and designedly partisan. Each of the divisions except the fourth consists of 10 members. Five of the permanent members are so-called carrier members, selected and designated by the railroads, and five of them are employee members, selected and designated by the national labor organizations of employees. The fourth division has only six members, three of them railroad members and three of them employee members.

Section 3, first (b) of the 1934 amendments requires the railroads, acting each through its designated management channels, to prescribe the rules under which the railroad members of the adjustment board are selected, and to select those members and designate the division on which each is to serve. A corresponding requirement is imposed on the labor organizations by section 3, first (c). Section 3, first (g) requires the railroads to compensate the carrier members, and the labor organization to compensate the employee members of the board.

In practice, the railroads are represented, for the purpose of appointing carrier members of the National Railroad Adjustment Board, by the territorial committees for the National Railroad Adjustment Board. There are an eastern committee, a western committee, and a southeastern committee, all of which were organized shortly after the 1934 amendments became effective; they operate under powers of attorney from the individual railroads. The committees serve

not only in connection with the appointment of carrier members and arrangements for their compensation, but serve also as the railroad policy group keeping in touch with the operation of the adjustment board. For this purpose they function as a single committee under one chairman, who currently is Mr. J. E. Wolfe. During the last 2½ years, the work of the territorial committees has been associated closely with that of the National Railway Labor Conference.

The carrier membership on each of the first, second, and third divisions consists of two members nominated by the eastern railroads, two nominated by the western railroads, and one nominated by the southeastern railroads. On the fourth division, with only three carrier members, one member is nominated by each regional group.

On the labor side, members are appointed by the standard railway labor organizations. Currently there are, I believe, some 21 or 22 organizations which participate. Each of the five engine, train and yard service employee organizations has one member on the first division; the five second division labor members are representatives of the railway employees' department which is made up of the shop employee organizations, including the railroad divisions of such organizations as the Machinists and the Electrical Workers. The third division has one member each from the organizations of clerks, train dispatchers, maintenance of way employees, signalmen and telegraphers. The fourth division has one member each from the Railroad Yardmasters of America, the American Railway Supervisors' Association, and the Railway Patrolmen's International Union. In any cases in which there are disputes as to the right of a labor organization to participate in designation of employee members of the adjustment board, procedures for determination by the Secretary of Labor are available under section 3, first (f) of the Railway Labor Act.

I have already commented on the provision of section 3, first (L) for the appointment of neutral members or referees in cases in which the party members of the adjustment board deadlock. The neutral members or referees, whether selected by the parties or appointed by the National Mediation Board are paid by the Federal Government through the Mediation Board.

Organization.—The 1934 amendments were approved by President Roosevelt on June 21, 1934. Members of the Board were appointed, and the Board commenced operations, later in the year. One of its first essential duties was its organization and the formulation of rules of procedure. The Board has followed the principle of alternating between the railroad members and the employee members in the chairmanships and vice-chairmanships of the entire Board and of the respective divisions. Accordingly, during the first year of the Board's operation a carrier member was Chairman of the Board and each Division had a carrier member as Chairman, and an employee member was Vice Chairman of the Board and each Division had a labor member as Vice Chairman. On July 1, 1935, labor members became Chairmen and carrier members became Vice Chairmen, and the roles have alternated annually since then.

Some of the rules of procedure of the Board were adopted by the entire Board as a whole and promulgated in its circular No. 1, issued October 10, 1934. That circular outlines the form of submissions, requiring that they "briefly set forth all relevant, argumentative facts, including all documentary evidence submitted in exhibit form," and affirmatively show that data in support of the position of each party have been presented to the other party and made a part of the question in dispute. Circular No. 1 was supplemented by certain rules adopted by each of the respective Divisions covering such matters as furnishing ex parte submissions to the other party, receipt of evidence after an ex parte submission is made, docketing and withdrawals of submissions, notices, witnesses, appearances, and the like.

Operation.—The First Division issued its first award December 6, 1934. The other Divisions issued their first awards in late 1934 and early 1935. From then through April 30, 1965, the First Division has issued 20,628 awards, the Second Division 4,710, the Third Division 13,587, and the Fourth Division, 1,998.

Attached as exhibit E is a table showing the number of awards issued by the respective Divisions, by years. It is illuminating to compare the number of awards issued by the First Division—a single Division consisting of 10 permanent members—with the aggregate numbers of awards issued by the 4 regional train service Boards of Adjustment functioning prior to 1934, which consisted of 8 members each, which are shown in exhibit C to this statement. In most years the output of the First Division has been greater than that of all four of the Train Service Boards of Adjustment put together, and even in the lean years the First

Division's output was on a parity with the output of any one of the four former Train Service Boards.

Exhibit F to this statement is a table which bears directly on the backlogs of the respective Divisions of the National Railroad Adjustment Board. It shows for each Division, by years, the number of cases docketed, the number decided, the number withdrawn, and the number remaining pending at the end of the year. For example, when the First Division commenced operation it was immediately confronted with some 1,200 cases which were withdrawn from the Train Service Boards of Adjustment and presented to the First Division. Those cases, and others which were submitted to the First Division in 1934–35, totaled 1,590. The Division entered 394 awards, and 101 cases were withdrawn, leaving a backlog of 1,095 cases pending at the end of the year. The tables covering the Second, Third, and Fourth Divisions, which acknowledge withdrawal of cases by the issuance of awards taking notice of the withdrawals, have been placed on a corresponding basis with the First Division table by excluding the withdrawn cases from the "awards" column. The available figures are on a fiscal year basis for the First Division up to 1941, and for the other Divisions for the entire period covered. The type of year for which the figures were maintained does not affect the trends or the conclusions to be drawn from the statistics.

I will comment in detail on these figures later in this statement, but would merely point out now that the First Division backlog increased steadily until it reached a high point of 6,092 cases as of December 31, 1942; it declined rather precipitously during the next 5 years, following which it increased for a time, and has fluctuated between 2,400 and 4,000 since 1952. On the Third Division, the backlog of cases never exceeded 500 until after June 30, 1954. That year it commenced a sharp rise which continued for 5 years. The backlog has since been somewhat reduced and now stands at 1,910. Note especially the steady reduction in the Third Division backlog since remedial efforts were applied by the parties beginning in 1962. This trend is particularly relevant as to the solution of the backlog problem when compared with the steadily increasing backlog of the First Division for the same years. Neither the Second Division nor the Fourth Division has ever had a substantial backlog of cases.

SPECIAL BOARDS OF ADJUSTMENT

Before I take up the problems which the First and Third Divisions of the National Railroad Adjustment Board have encountered, I will outline briefly the nature, operation, and utilization of Special Boards of Adjustment under section 3, Second of the Railway Labor Act. The Special Boards should be identified at this point because of their role in supplementing the National Railroad Adjustment Board.

General.—Special Boards of Adjustment are tribunals set up by agreement, usually on an individual railroad, and with a single labor organization of employees or two or more organizations representing employees of related classes or crafts (such as the five engine, train and yard service employee organizations), to consider and decide specifically agreed to dockets of claim and grievance cases which would otherwise be within the jurisdiction of a Division of the National Railroad Adjustment Board.

The Special Board of Adjustment device had its inception in the 1940's, and has been suggested by the National Mediation Board as an effective procedure for the handling of grievance dockets through an adaptation of the grievance function of Divisions of the National Railroad Adjustment Board.[9] They derive their statutory authority from section 3, Second of the Railway Labor Act, and typically consist of three members—a railroad member, an organization member, and a neutral chairman selected by the other two members or, if the party members fail to select him, designated by the National Mediation Board. Special Boards which involve more than one labor organization generally have five or more members so that representation may be afforded all of the organizations involved, or the membership of the Board on the employees' side may change as disputes involving first one organization, then another, are handled. The parties bear the compensation and expenses of their respective members, and the National Mediation Board assumes the compensation and expenses of the neutral members under the provisions of section 3 of the Railway Labor Act.

Exhibit H to this statement includes four representative agreements establishing Special Boards of Adjustment. Although all such agreements cover such

[9] National Mediation Board, 15th annual report, June 1949, p. 13.

matters as jurisdiction of the Board (usually attaching a list of dockets referred to it), its membership, its financing, rules of procedure, status of awards, and continued existence of the Board until it has fulfilled its designated functions, the terms of such agreements differ in material respects.

Operation.—Exhibit G to this statement is a tabulation, from available National Railway Labor Conference records, showing the number of Special Boards of Adjustment which have been created, year by year, commencing with 1949. A total of about 609 such Boards have been created. It shows also the awards rendered by such special Boards, which have totaled more than 37,000. In columns 2 through 7, the awards are shown in relation to the Special Boards of Adjustment which rendered them; in other words, the awards by a Special Board of Adjustment which was created, say, in 1952 are shown in the 1952 line, regardless of whether such awards were rendered in 1952 or not until some subsequent year. The last column on the page (column 8), which was compiled from annual reports of the National Mediation Board, shows according to that agency's records the number of awards which all Special Boards have rendered, according to the year in which the Special Board rendering it was created.

Some Special Boards of Adjustment have been short lived, but others have continued to function for years. The record for longevity has been set by Special Board of Adjustment No. 18, which was created September 3, 1952, by the Southern Pacific and its engineers, firemen, conductors, and trainmen and is still functioning today, almost 14 years later. It outlived one of its neutral referees, Judge Thomas J. Mabry, who died in 1963 after having served as referee almost since the Board commenced operations. It had rendered 3,871 awards through June 1964.

As exhibit G indicates, the Special Board device has been used to a much greater extent among the engine, train, and yard service employee organizations than among those representing nonoperating employees, although in keeping with the agreement reached with the organizations participating in the Third Division on May 31, 1963 (see below), the number of nonoperating employee Special Boards of Adjustment may be expected to increase.

Disputes committees.—A special use of the Special Board of Adjustment device has been in connection with disputes committees which have been established by agreement on a national basis to decide disputes involving interpretation or application of certain of the national agreements. These, too, have involved the engine, train, and yard service employees to a much greater extent than the nonoperating employees, although here again the disputes committee created last year to take over cases involving certain national agreements which would otherwise be before the Third Division may be expected to reflect an increase in the number of awards issued by Special Boards of Adjustment involving nonoperating employees.

Disputes committees, which typically consist of the chairmen of the respective carriers' conference committees which negotiated the agreement involved (or representatives of such chairmen) and an equal number of employee organization representatives, meet as bipartite groups to handle disputes involving interpretation or application of the national agreement involved. If they are unable to reach agreement on any case or cases, typically they use the referee procedure in which they either agree upon, or request the Mediation Board to appoint, a neutral referee. When the neutral referee is determined upon, the National Mediation Board uses the special board of adjustment designation for the disputes committee, functioning with the referee. In the past, the Mediation Board has consistently used Federal funds to pay neutrals' fees and other expenses. However, there is a current trend for the parties to assume these expenses, as is the case with virtually all other industries. Several recent national agreements so provide.

Effect of awards.—Many agreements creating special boards of adjustment state that the awards of the boards are to be "final and binding upon the parties." Other agreements creating special boards of adjustment provide that awards of the special board "shall have the same force and effect as awards of the National Railroad Adjustment Board." The variety of agreement provisions on this matter is reflected in exhibit H.

THE NRAB BACKLOG PROBLEM

General.—The National Railroad Adjustment Board has been in existence for 30 years. For at least 25 of those years, discussions of the Board and its

procedures have been concerned with the backlog of cases and the length of time required to reach awards. However, the backlog problem differs in two respects from the weather, which as Mark Twain once pointed out everyone complains about but nobody does anything about. In the first place, the backlog is not, like the weather, a universal phenomenon. Until 1955 the problem was confined entirely to the First Division, and even today it constitutes no problem on the Second and Fourth Divisions. In the second place, action has been taken to meet the problem and such action has demonstrated its effectiveness. That the problem persists on the First Division is due in large part to the fact that the remedial action once tried has been discontinued, and in further part to failure to take appropriate new action.

The figures in exhibit F to this statement, which were commented on briefly above, indicate clearly where the problem exists. My discussion will accordingly concentrate on the trouble areas, after some brief comments on the divisions which have not had any substantial backlogs. I will reserve the First Division, where the problem has been most persistent, for the last.

Number of employees under jurisdiction of each division.—As background for discussion of the backlog, so that the numbers of cases submitted to the several divisions of the Adjustment Board can be related to the numbers of employees potentially involved, there are shown below the numbers of employees of class I railroads who are within the jurisdiction of the respective divisions of the National Railroad Adjustment Board. The figures are for the calendar year 1964, and are averages of the midmonth employee counts for the year. They are based on studies by the territorial committees for the National Railroad Adjustment Board which have been made to develop the basis for assessments:

1st Division	193,195
2d Division	146,581
3d Division	290,772
4th Division	27,765

Second Division.—The Second Division of the National Railroad Adjustment Board has jurisdiction over shop employees—those engaged in the maintenance of railroad rolling stock and equipment.

A total of approximately 51,000 cases have been submitted to the Second Division during the last 30 years. It has issued 3,846 awards deciding cases, and 851 cases have been withdrawn, leaving a backlog of 250 cases pending as of April 30, 1965.

Mr. Strunck, who for some time was a member of the Second Division, will comment in greater detail on the Second Division situation. I merely point out that, as shown in exhibit F, no substantial backlog of cases has ever accumulated on the Second Division. It has always kept well abreast of the influx of new cases, and during the past 2 years it has actually reduced the number of cases pending before it. Such questions as have arisen as to the length of time required to produce a decision in a case before the Second Division have given consideration by the territorial committees for the National Railroad Adjustment Board and by the labor organizations making up the Railway Employees Department, AFL–CIO, which represent the employees who come within the jurisdiction of the Division, and they have taken appropriate action. The railroad territorial committees continue to keep the situation under close attention.

Fourth Division.—As shown above, the employees who are within the jurisdiction of the Fourth Division are relatively few in number, and as exhibit F indicates, the number of cases involving them which have been submitted to the Fourth Division has not been great. Even though the Division consists of only 6 permanent members compared with the 10 members on each of the other divisions, it has been able to keep its work on a current basis and has never accumulated any appreciable backlog.

Third Division.—More employees are within the jurisdiction of the Third Division than of any of the other divisions of the National Railroad Adjustment Board. The diversity of their working characteristics and agreement provisions is greater than those of employees within the jurisdiction of the Second Division and in some respects compares with the First Division situation. Despite those facts, the backlog of cases on the Third Division remained within reasonable proportions until 1956 and is currently being steadily reduced.

Mr. Strunck will comment, on the basis of his personal experience as a member of the Third Division, on the functioning of that Division and the

factors which led to the accumulation of its backlog of cases commencing in 1955.

The railroads, acting through the Territorial Committees for the National Railroad Adjustment Board and more recently through the National Railway Labor Conference, early became aware of the increase in backlog of pending cases before the Third Division, and they took prompt steps to correct it, in cooperation with the labor organizations involved.

On March 28, 1961, agreement was reached establishing a parallel board supplemental to the Third Division and consisting of the same number of members (railroad and employees) and with the same provisions as the Third Division for appointment of referees, status to be accorded awards, and other matters involved. Copy of the March 28, 1961, agreement is exhibit I to this statement. The Supplemental Third Division commenced operations in June 1961, and since it got into full operation has rendered 1,630 awards, as shown in exhibit J. During this same period, the regular Third Division has rendered a corresponding number of awards—1,321. (The greater number of awards by the Supplemental Third Division arises, in part at least, because certain administrative functions have been assigned to the regular Division, leaving the Supplemental Third Division free to decide cases after the procedural handling had been given them.) The Supplemental Third Division has contributed directly to the reduction of 821 cases in the Third Division backlog since June 30, 1962.

As exhibit F indicates, 1,170 cases were submitted to the Third Division in the 1956 fiscal year, and almost 900 were submitted the next year. Since then there have been between 700 and 800 submitted per year (except for a dip in 1960). Current output of the Third Division, including its Supplemental Board, is about 900 cases per year, and withdrawals account for an additional 100 to 200, making a net reduction of several hundred cases per year. This has been eating away at the backlog, but additional measures have been taken.

The Territorial Committees for the National Railroad Adjustment Board and the labor organizations interested in the Third Division have taken further steps looking toward elimination of the backlog. The first of these was improvement in procedures of the Third Division itself. Next was the establishment of an optional procedures for the further handling of cases which were before the Division, involving review of pending cases to take place on the property and in appropriate instances further handling of such cases on a selective basis, looking toward disposition of as many cases as could be disposed of and submission of others to Special Boards of Adjustment set up on the property under section 3, second of the Railway Labor Act. The National Railway Labor Conference urged each railroad to give most profound consideration to active participation in that procedure, and the labor organizations extended their assurances that they would conscientiously carry out the commitments mutually exchanged in an endeavor to make the effort successful. This matter is covered by Circular No. 1 of the National Railway Labor Conference, dated May 31, 1961, which is exhibit K to this statement.

Finally, formal agreement, embodied in a memorandum dated May 31, 1963, was reached between the National Railway Labor Conference and the labor organizations primarily involved before the Third Division—clerks, maintenance of way employees, signalmen and telegraphers—providing for the formation of a National Disputes Committee for the purpose of disposing of disputes involving interpretation or application of certain provisions of specified national agreements. The memorandum establishing the National Disputes Committee is exhibit L to this statement.

Mr. Strunck will comment further on the procedural matter, the mechanics for further review of cases on the property, and the issues before the National Disputes Committee and the functioning of the Committee.

The National Disputes Committee commenced operations in the spring of 1963. While its operations are in the formative stage, we expect it to make inroads into the Third Division backlog in the near future.

As the Third Division table in exhibit F indicates, the backlog of pending cases before the Third Division has been reduced by more than 700 cases during the last 4 years. This is clear indication that the railroads and the labor organizations which are primarily involved in that division's activities are fully aware of the problems presented and are doing something about it within the framework of existing laws.

First Division.—The biggest backlog of cases, and the longest delay in reaching disposition of cases, involves the First Division of the National Railroad Ad-

justment Board, which has jurisdicton over disputes involving engine, train, and yard service employees of the railroads.

As previous portions of this statement have indicated, prior to 1934 there had been almost 20 years of experience with Board of Adjustment procedures dealing with disputes involving engine, train, and yard service employees, commencing with Board of Adjustment No. 1 during the U.S. Railroad Administration and including the Train Service Boards of Adjustment established under the Transportation Act of 1920 and the Railway Labor Act as enacted in 1926. As exhibit C shows, the Train Service Boards of Adjustment alone rendered an aggregate of 9,321 awards.

When the First Division organized and commenced operations in December 1934, it was immediately faced with a backlog of some 1,200 cases which had been withdrawn from the Regional Train Service Boards of Adjustment and submited to the First Division. As exhibit E shows, in the first full year of its operation the division disposed of 721 cases, and from then until 1945 its output never dropped below 800 awards per year. It exceeded 1,100 in 4 years—1939, 1942, 1943, and 1944. However, new cases were submitted to the division even faster than awards disposed of pending cases, and by 1943 a backlog in excess of 6,000 had developed. During the next 3 years, the number of cases withdrawn plus the number of cases covered by awards exceeded by a narrow margin the number of new cases docketed, so that the backlog declined.

Three of the exhibits to this statement relate to the output of the First Division and the fluctuations in the backlog of pending cases. Exhibit F shows the number of cases docketed, decided, withdrawn, and pending; exhibit E shows the number of awards, divided between those rendered with referee and those rendered without participation of a referee; and exhibit M shows the number and proportion of awards each year in which claims were sustained in whole or in part, as compared with those in which claims were denied, remanded or dismissed.

The First Division suspended operations for a time commencing in October 1945. The suspension followed by a few months the June 11, 1945, Supreme Court decision in *Elgin, Joliet & Eastern Railway Company* v. *Burley*, which I am told raised doubts as to the authority of those appearing before the First Division and consequently posed questions as to what action the Division should itself take. On March 25, 1946, the Supreme Court issued a second decision, on rehearing of the case, as a result of which the doubts raised by the first decision were overcome. However, between the dates of the two decisions, the First Division's functions were interrupted for a 9-month period (from October 1945 through June 1946).

Several vacancies had developed in the membership of the First Division during the period while it was not functioning, and in the filling of those vacancies and subsequent ones there was an extensive change in the membership, both on the railroad side and on the employee side.

Shortly after the First Division resumed its functioning in July 1946, the backlog of cases rose again. There were no indications that the backlog would be diminished, and in May 1949, under the auspices of the National Mediation Board, the Territorial Committees for the National Railroad Adjustment Board and the executives of the labor organizations involved reached agreements on procedures for deciding a greater number of cases and thereby dissipating the backlog. Like the later agreements in connection with the Third Division, the First Division agreements of March 1949 were along two lines. The first one called for a reform in the provisions for handling ex parte submissions, to improve procedures before the Division. The second was agreement for the creation of two supplemental boards, paralleling the First Division, to handle cases already on the docket of the Division and such additional cases as might be assigned to them by the Division, and thereby work down the backlog. The memorandum of May 19, 1949, to establish the supplemental boards is exhibit N to this statement. Mr. Horsley, who is a member of the First Division, will outline the functioning of the Supplemental First Division Boards and will comment on the procedural matters.

The supplemental boards commenced operation late in 1949 and early in 1950. From then through the year 1952 they rendered almost as many awards as the First Division proper. As shown in exhibit P, the Conductors' and Trainmen's Supplemental Board disposed of 912 cases involving 28 railroads, and the Engineers' and Firemen's Supplemental Board disposed of 579 cases between 1949 and 1953 involving 13 railroads. However, because of the great increase in the

number of cases submitted to the First Division, the backlog of pending cases continued to be a problem. More than 2,000 cases were submitted to the First Division during the fiscal year 1951–52 alone.

During the latter part of 1952 the labor organizations interested in the First Division asserted that the supplemental boards were not fulfilling their intended function of decreasing the First Division backlog, and they urged that the supplemental boards be terminated. Some of the organizations indicated they intended not to submit additional cases to the First Division but rather to handle cases on individual railroads, perhaps using for that purpose organization officers who were then serving as members of the First Division or the supplemental boards. The organizations mentioned also increased utilization of special boards of adjustment on individual railroads.

The agreement creating the supplemental boards had provided for its termination on 90 days' notice by either party. When such agreement was reached, it was understod that the supplemental boards would take up cases in batches, railroad by railroad, and complete the cases involving one railroad before turning to those involving another; and that the railroad membership on them would be rotated, consisting for each Board of one permanent member and one member who was an official of the railroad party to the docket of cases then under consideration.

Among the reported reasons for dissatisfaction on the part of the organizations with the supplemental board setup was an objection to the rotating-carrier-member principle. When this became known to the Carrier Territorial Committees for the National Railroad Adjustment Board, the committees expressed their willingness to discontinue the arrangement for a revolving carrier member and to place two permanent carrier members (rather than one permanent member and one revolving member) on each supplemental board—or to consider any reasonable arrangements which would continue the supplemental boards in operation looking toward prompt and expeditious handling of contract and grievance disputes. The letter of March 4, 1953, from the chairman of the territorial committees to the Chairman of the National Mediation Board, expressing the willingness of the territorial committees to amend the earlier understandings for the purpose of continuing the supplemental boards, is exhibit R to this statement.

Following several conferences on the matter between the railroad territorial committees and the organizations, on December 22, 1952, the chiefs of the labor organizations involved wrote the chairmen of the territorial committees giving notice of the organizations' desire to terminate the May 19, 1949, agreement and accordingly terminate the supplemental boards for the First Division. Their letter of notice is exhibit Q to this statement. Although the territorial committees pointed out that the abolition of the supplemental boards could only mean a material cut in productivity of the First Division, which they felt was contrary to the intent of Congress in setting up the Adjustment Board in the 1934 amendments to the Railway Labor Act, their efforts as well as those of the Mediation Board to induce the labor organizations to permit continued operation of the supplemental boards were unavailing. Accordingly, in keeping with the termination and notice provisions of the 1949 agreement, the first supplemental boards passed out of existence March 22, 1953.

While these supplemental boards were in existence, they rendered an average of 37 awards per month. If they had been permitted to continue to do so, they would have been of material assintance in preventing accumulation of the new backlog of cases which now faces the First Division. As exhibit F shows, a new Supplemental Board of the First Division just began operation on March 1, 1965. It was created by agreement between the carrier territorial committees and one operating union, the Brotherhood of Locomotive Firemen & Enginemen. As such it will handle cases only involving the firemen's organization. Its 1 month of operation and the results therefrom are indicative, however, of how this backlog can be reduced if the other operating organizations such as the Brotherhood of Railroad Trainmen are seriously interested in actually doing so, without enacting the instant bills. More will be said about this new Supplemental Board at a later time.

During the 5 years following termination of the supplemental boards, the First Division backlog was substantially reduced. The major reduction took place late in 1952 and early in 1953, when almost 2,000 cases were withdrawn from the First Division; many were turned over to special boards of adjustment on individual railroads. This was coupled with a progressive reduction in the number of cases submitted to the First Division. Commencing in 1957, however, the number of cases submitted turned upward and then leveled somewhat, and

the number of awards rendered by the First Division declined also. The withdrawal of cases dwindled, with the result that the backlog turned upward and increased year by year. As of April 30, 1965, it stood at 4,120 cases, as indicated by exhibit F.

All three of the tendencies just mentioned operate in the same direction to increase the backlog of cases pending before the First Division. Individually as well as collectively, the statistics of the last few years point the way to action which could decrease the backlog of pending cases and, once the backlog has been decreased, maintain it within manageable proportions.

The current high rate of docketing of new cases, shown in the first figure column of exhibit F, suggests the desirability of more thorough screening of cases on the part of the labor organizations before the cases are permitted to go to the First Division. Such action is not within the authority of the Adjustment Board or of the railroad territorial committees for the National Railroad Adjustment Board. Only the labor organizations can bring it about. The fact that they permit many cases which lack merit to be submitted to the First Division is borne out by the statistics as to the nature of awards currently being rendered by the Division, as shown in exhibit M. Adequate screening to eliminate a reasonable proportion of the cases which lack merit, and which burden both the permanent members of the Division and the referees who are called upon to serve with it, would be a material contribution toward decreasing the backlog.

The second column of figures in exhibit F reflects the current slow rate of activity on the part of the First Division. During the last 2 fiscal years the Division rendered an average of less than 150 awards per year. This compares with the output of 220 decisional awards per year over the last 3 full years for the Second Division, which had a substantially current docket, 409 for the regular Third Division, and 334 for the Supplemental Third Division, each of which, like the First Division, consists of 10 permanent members. It compares also with the 800 to 1,300 awards rendered per year, during the first 10 years of its existence, by the First Division itself, and an average of 684 awards per year for the 10-year period 1947-56. It compares also with the average of almost 200 awards per year by the Train Service Boards of Adjustment, which preceded the establishment of the National Railroad Adjustment Board. The Train Service Boards of Adjustment consisted of eight members each. Mr. Horsley, speaking from his experience as a carrier member of the First Division, will comment on the reasons for the current level of output of the First Division and suggest steps to improve it.

The third column of figures in exhibit F shows the small number of cases currently being withdrawn from the dockets of the First Division. While in 1964 there was a fair increase, it still was not adequate under the circumstances. Also, preliminary figures for 1965 are not encouraging. Cases may be withdrawn for any of a number of reasons. They may be disposed of on the property, either through settlement of a claim or through the eventual realization on the part of the General Chairman that the claim lacks merit and should not be further progressed. The parties may agree to withdraw the case from the First Division and submit it to a Special Board of Adjustment under section 3, Second of the Railway Labor Act. Or, as result of handling on the Division itself, the labor member charged with the case may become convinced that it lacks merit and that there is no point in progressing it further.

The low rate of withdrawal of cases currently, coupled with the high rate of submission of new cases and the high proportion of awards denying, dismissing, or remanding claims, suggests that a considerable number of cases which lack merit are not only being submitted to the First Division but are being permitted to go to referees for decision—and that realistic handling on the part of the regular members of the Division could well lead to the withdrawal of a substantial proportion of such cases, thereby contributing to reduction in the backlog. These same figures suggest existence of a fertile field for the withdrawal of cases from the First Division and their submission to Special Boards of Adjustment—although for reasons which my associates will develop they do not support the argument that creation of Special Boards of Adjustment should be mandatory on request of a labor organization, as would be provided by H.R. 701, or mandatory on the request of either a labor organization or a railroad, as would be provided by H.R. 706.

The above analysis of the factors leading to the present First Division backlog has been in terms of the available statistics. Mr. Horsley's testimony, on the

basis of his personal experience, will corroborate the conclusions which have been suggested by the statistics I have presented to you.

Exhibit S to the statement shows the number of cases comprising the First Division backlog as of April 30, 1965, by railroad and by class of employee. The greatest proportion of such cases involve employees represented by the Brotherhood of Railroad Trainmen, with those represented by the Brotherhood of Locomotive Firemen & Enginemen in second place. However, on a per-employee-represented basis, the number of pending cases involving firemen is greater than the number involving trainmen inasmuch as there are currently far less employees in the fireman classes than in the trainman classes. The firemen, however, have with the carriers taken a step to help remedy the problem, as I have previously described.

Special boards of adjustment are now being utilized, on a voluntary basis, in a gratifying number of cases, as my presentation has pointed out. The National Railway Labor Conference has consistently urged individual railroads having large numbers of cases pending to utilize special boards of adjustment to work down their dockets, to the end that decisions on claims and grievances may be arrived at readily and the burden on the First Division be eased.

CONCLUSION

My statement has presented historical, statistical, documentary and background material which will be of interest to the committee in its consideration of H.R. 701, 704 and 706.

This material underlies the conclusion of the railroads that the bills which are before the committee are not necessary and are not in the interest of the railroads, their employees or the public. Mr. Wolfe, who is to appear before your committee, will voice that conclusion with the reasons therefor.

My associates may have occasion to refer to my statement or to my exhibits as they present testimony based on their personal experience, and give you the views of the industry.

EXHIBITS ACCOMPANYING STATEMENT OF W. L. BURNER, JR.

A. Title III, Transportation Act of 1920.
B. Section 3, Railway Labor Act of 1926.
C. Number of awards rendered by regional train service boards of adjustment, 1922–35 (table).
D. Section 3, Railway Labor Act as amended (1934).
E. Number of awards of Divisions of National Railroad Adjustment Board, 1934–65 (table).
F. Number of cases submitted, decided, withdrawn, and pending before Divisions of National Railroad Adjustment Board, 1934–65 (table).
G. Number of special boards of adjustment created, 1949–65, and number of awards issued thereby (table).
H. Certain agreements to establish special boards of adjustment.
    1. Chicago & North Western, Trainmen (Apr. 17, 1960).
    2. Illinois Central, Trainmen (Apr. 15, 1963).
    3. Denver & Rio Grande Western, Telegraphers (July 22, 1963).
    4. Alton & Southern, Trainmen (Apr. 3, 1961).
I. Memorandum (agreement) of March 28, 1961, to establish Supplemental Board for Third Division, NRAB.
J. Number of awards of regular and Supplemental Third Divisions, NRAB, 1961–65 (table).
K. Circular No. 1 of National Railway Labor Conference (May 31, 1963), concerning understanding as to optional procedure for further handling of cases pending before Third Division, NRAB.
L. Circular No. 5 of National Railway Labor Conference (Oct. 11, 1963), and memorandum (agreement) of May 31, 1963, to establish a National Disputes Committee to dispose of disputes involving interpretation or application of certain national agreement provisions.
M. Nature of awards of First Division, NRAB, 1934–65 (table).
N. Memorandum (agreement) of May 19, 1949, to establish two supplemental boards for First Division, NRAB.
O. Press release of National Mediation Board, dated May 20, 1949.

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P. Number of awards of regular and supplemental first divisions, NRAB, 1949–65 (table).
Q. Letter of December 22, 1952, from chiefs of labor organizations involved in First Division, NRAB, to chairmen of territorial carrier committees for National Railroad Adjustment Board, giving notice of organizations' desire to terminate the May 19, 1949, agreement which had provided for First Division supplemental boards.
R. Letter of March 4, 1953, from chairmen of territorial committees for National Railroad Adjustment Board to Chairman of National Mediation Board, concerning notice by labor organizations of desire to terminate First Division supplemental boards.
S. Number of cases pending before First Division, NRAB, as of April 30, 1965.

EXHIBIT A

TITLE III. TRANSPORTATION ACT, 1920

(Public—No. 152—66th Congress)
(H.R. 10453)

TITLE III.—DISPUTES BETWEEN CARRIERS AND THEIR EMPLOYEES AND SUBORDINATE OFFICIALS EFFECTIVE FEBRUARY 28, 1920

Section 300. When used in this title—

(1) The term "carrier" includes any express company, sleeping-car company, and any carrier by railroad, subject to the Interstate Commerce Act, except a street, interurban, or suburban electric railway not operating as a part of a general steam railroad system of transportation;

(2) The term "Adjustment Board" means any Railroad Board of Labor Adjustment established under section 302;

(3) The term "Labor Board" means the Railroad Labor Board;

(4) 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; and

(5) The term "subordinate official" includes officials of carriers of such class or rank as the Commission shall designate by regulation formulated and issued after such notice and hearing as the Commission may prescribe, to the carriers, and employees and subordinate officials of carriers, and organizations thereof, directly to be affected by such regulations.

Section 301. It shall be the duty of all carriers and their officers, employees, and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or the employees or subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto to the Board which, under the provisions of this title, is authorized to hear and decide such dispute.

Section 302. Railroad Boards of Labor Adjustment may be established by agreement between any carrier, group of carriers, or the carriers as a whole, and any employees or subordinate officials of carriers, or organization or group of organizations thereof.

Section 303. Each such Adjustment Board shall, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon the written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, (3) upon the Adjustment Board's own motion, or (4) upon the request of the Labor Board whenever such board is of the opinion that the dispute is likely substantially to interrupt commerce, receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving only grievances, rules, or working conditions, not decided as provided in section 301, between the carrier and its employees or subordinate

officials, who are, or any organization thereof which is, in accordance with the provisions of section 302, represented upon any such Adjustment Board.

Section 304. There is hereby established a board to be known as the Railroad Labor Board and to be composed of nine members, as follows:

(1) Three members constituting the labor group, representing the employees and subordinate officials of the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by such employees in such manner as the Commission shall by regulation prescribe;

(2) Three members, constituting the management group, representing the carriers, to be appointed by the President, by and with the advice and consent of the Senate, from not less than six nominees whose nominations shall be made and offered by the carriers in such manner as the Commission shall by regulation prescribe; and

(3) Three members, constituting the public group, representing the public, to be appointed directly by the President, by and with the advice and consent of the Senate.

Any vacancy on the Labor Board shall be filled in the same manner as the original appointment.

Section 305. If either the employees or the carriers fail to make nominations and offer nominees in accordance with the regulations of the Commission, as provided in paragraphs (1) and (2) of section 304, within 30 days after the passage of this act in case of any original appointment to the office of member of the Labor Board, or in case of a vacancy in any such office within 15 days after such vacancy occurs, the President shall thereupon directly make the appointment, by and within the advice and consent of the Senate. In making any such appointment the President shall, as far as he deems it practicable, select an individual associated in interest with the carriers or employees thereof, whichever he is to represent.

Section 306. (a) Any member of the Labor Board who during his term of office is an active member or in the employ of or holds any office in any organization of employees or subordinate officials, or any carrier, or owns any stock or bond thereof, or is pecuniarily interested therein, shall at once become ineligible for further membership upon the Labor Board; but no such member is required to relinquish honorary membership in, or his rights in any insurance or pension or other benefit fund maintained by, any organization of employees or subordinate officials or by a carrier.

(b) Of the original members of the Labor Board, one from each group shall be appointed for a term of three years, one for two years, and one for one year. Their successors shall hold office for terms of five years, except that any member appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. Each member shall receive from the United States an annual salary of $10,000. A member may be removed by the President for neglect of duty or malfeasance in office, but for no other cause.

Section 307. (a) The Labor Board shall hear, and as soon as practicable and with due diligence decide, any dispute, involving grievances, rules, or working conditions, in respect to which any Adjustment Board certifies to the Labor Board that in its opinion the Adjustment Board has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board determines that any Adjustment Board has so failed or is not using due diligence in its consideration thereof. In case the appropriate Adjustment Board is not organized under the provisions of section 302, the Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions which is not decided as provided in section 301 and which such Adjustment Board would be required to receive for hearing and decision under the provisions of section 303.

(b) The Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion

that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable and with due diligence decide, all disputes with respect to the wages or salaries of employees or subordinate officials of carriers, not decided as provided in section 301. The Labor Board may upon its own motion within 10 days after the decision, in accordance with the provisions of section 301, of any dispute with respect to wages or salaries of employees or subordinate officials of carriers, suspend the operation of such decision if the Labor Board is of the opinion that the decision involves such an increase in wages or salaries as will be likely to necessitate a substantial readjustment of the rates of any carrier. The Labor Board shall hear any decision so suspended and as soon as practicable and with due diligence decide to affirm or modify such suspended decision.

(c) A decision by the Labor Board under the provision of paragraph (a) or (b) of this section shall require the concurrence therein of at least five of the nine members of the Labor Board: *Provided*, That in case of any decision under paragraph (b), at least one of the representatives of the public shall concur in such decision. All decisions of the Labor Board shall be entered upon the records of the Board and copies thereof, together with such statement of facts bearing thereon as the Board may deem proper, shall be immediately communicated to the parties to the dispute, the President, each Adjustment Board, and the Commission, and shall be given further publicity in such manner as the Labor Board may determine.

(d) All the decisions of the Labor Board in respect to wages or salaries and of the Labor Board or an Adjustment Board in respect to working conditions of employees or subordinate officials of carriers shall establish rates of wages and salaries and standards of working conditions which in the opinion of the Board are just and reasonable. In determining the justness and reasonableness of such wages and salaries or working conditions the Board shall, so far as applicable, take into consideration among other relevant circumstances:

(1) The scales of wages paid for similar kinds of work in other industries;
(2) The relation between wages and the cost of living;
(3) The hazards of the employment;
(4) The training and skill required;
(5) The degree of responsibility;
(6) The character and regularity of the employment; and
(7) Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments.

Section 308. The Labor Board—

(1) Shall elect a Chairman by majority vote of its members;

(2) Shall maintain central offices in Chicago, Ill., but the Labor Board may, whenever it deems it necessary, meet at such other place as it may determine;

(3) Shall investigate and study the relations between carriers and their employees, particularly questions relating to wages, hours of labor, and other conditions of employment and the respective privileges, rights, and duties of carriers and employees, and shall gather, compile, classify, digest, and publish, from time to time, data and information relating to such questions, to the end that the Labor Board may be properly equipped to perform its duties under this title and that the members of the Adjustment Boards and the public may be properly informed;

(4) May make regulations necessary for the efficient execution of the functions vested in it by this title; and

(5) Shall at least annually collect and publish the decisions and regulations of the Labor Board and the Adjustment Boards and all court and administrative decisions and regulations of the Commission in respect to this title, together with a cumulative index-digest thereof.

Section 309. Any party to any dispute to be considered by an Adjustment Board or by the Labor Board shall be entitled to a hearing either in person or by counsel.

Section 310. (a) For the efficient administration of the functions vested in the Labor Board by this title, any member thereof may require, by subpena issued and signed by himself, the attendance of any witness and the production of any book, paper, document, or other evidence from any place in the United States at any designated place of hearing, and the taking of a deposition before any designated person having power to administer oaths. In the case of a deposition the testimony shall be reduced to writing by the person taking the deposition or

under his direction, and shall then be subscribed to by the deponent. Any member of the Labor Board may administer oaths and examine any witness. Any witness summoned before the Board and any witness whose deposition is taken shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(b) In case of failure to comply iwth any subpena or in case of the contumacy of any witness appearing before the Labor Board, the Board may invoke the aid of any United States district court. Such court may thereupon order the witness to comply with the requirements of such subpena, or to give evidence touching the matter in question, as the case may be. Any failure to obey such order may be punished by such court as a contempt thereof.

(c) No person shall be excused from so attending and testifying or deposing, nor from so producing any book, paper, document, or other evidence on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, as to which in obedience to a subpena and under oath, he may so testify or produce evidence, documentary or otherwise. But no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

Section 311. (a) When necessary to the efficient administration of the functions vested in the Labor Board by this title, any member, officer, employee, or agent thereof, duly authorized in writing by the Board, shall at all reasonable times for the purpose of examination have access to and the right to copy any book, account, record, paper, or correspondence relating to any matter which the Board is authorized to consider or investigate. Any person who upon demand refuses any duly authorized member, officer, employee, or agent of the Labor Board such right of access or copying, or hinders, obstructs, or resists him in the exercise of such right, shall upon conviction thereof be liable to a penalty of $500 for each such offense. Each day during any part of which such offense continues shall constitute a separate offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

(b) Every officer or employee of the United States, whenever requested by any member of the Labor Board or an Adjustment Board duly authorized by the Board for the purpose, shall supply to such Board any data or information pertaining to the administration of the functions vested in it by this title, which may be contained in the records of his office.

(c) The President is authorized to transfer to the Labor Board any books, papers, or documents pertaining to the administration of the functions vested in the Board by this title which are in the possession of any agency, or Railway Board of Adjustment in connection therewith, established for executing the powers granted the President under the Federal Control Act and which are no longer necessary to the administration of the affairs of such agency.

Section 312. Prior to September 1, 1920, each carrier shall pay to each employee or subordinate official thereof wages or salary at a rate not less than that fixed by the decision of any agency, or Railway Board of Adjustment in connection therewith, established for executing the powers granted the President under the Federal Control Act, in effect in respect to such employee or subordinate official immediately preceding 12:01 a.m., March 1, 1920. Any carrier acting in violation of any provision of this section shall upon conviction thereof be liable to a penalty of $100 for each such offense. Each such action with respect to any such employee or subordinate official and each day or portion thereof during which the offense continues shall constitute a separate offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States, and shall be covered into the Treasury of the United States as miscellaneous receipts.

Section 313. The Labor Board, in case it has reason to believe that any decision of the Labor Board or of an Adjustment Board is violated by any carrier, or employee or subordinate official, or organization thereof, may upon its own motion after due notice and hearing to all persons directly interested in such violation, determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine.

Section 314. The Labor Board may (1) appoint a secretary, who shall receive from the United States an annual salary of $5,000; and (2) subject to the provisions of the civil service laws, appoint and remove such officers, employees, and agents; and make such expenditures for rent, printing, telegrams, telephone, law-

books, books of reference, periodicals, furniture, stationery, office equipment, and other supplies and expenses, including salaries, traveling expenses of its members, secretary, officers, employees and agents, and witness fees as are necessary for the efficient execution of the functions vested in the Board by this title and as may be provided for by Congress from time to time. All of the expenditures of the Labor Board shall be allowed and paid upon the presentation of itemized vouchers therefor approved by the Chairman of the Labor Board.

Section 315. There is hereby appropriated for the fiscal year ending June 30, 1920, out of any money in the Treasury not otherwise appropriated, the sum of $50,000, or so much thereof as may be necessary, to be expended by the Labor Board for defraying the expenses of the maintenance and establishment of the Board, including the payment of salaries as provided in this title.

Section 316. The powers and duties of the Board of Mediation and Conciliation created by the Act approved July 15, 1913, shall not extend to any dispute which may be received for hearing and decision by any Adjustment Board or the Labor Board.

EXHIBIT B

[PUBLIC—NO. 257—69TH CONGRESS]

[H.R. 9463]

AN ACT To provide for the prompt disposition of disputes between carriers and their employees, and for other purposes

BOARDS OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

SEC. 3. First. Boards of adjustment shall be created by agreement between any carrier or group of carriers, or the carriers as a whole, and its or their employees. The agreement—

(a) Shall be in writing;

(b) Shall state the group or groups of employees covered by such adjustment board;

(c) Shall provide that disputes between an employee or group of employees and a carrier, growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, 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, that the dispute shall be referred to the designated adjustment board by the parties, or by either party, with a full statement of the facts and all supporting data bearing upon the dispute;

(d) Shall provide that the parties may be heard either in person, by counsel, or by other representative, as they may respectively elect, and that adjustment boards shall hear and, if possible, decide promptly all disputes referred to them as provided in paragraph (c). Adjustment boards shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in the dispute;

(e) Shall stipulate that decisions of adjustment boards shall be final and binding on both parties to the disputes; and it shall be the duty of both to abide by such decisions;

(f) Shall state the number of representatives of the employees and the number of representatives of the carrier or carriers on the adjustment board, which number of representatives, respectively, shall be equal;

(g) Shall provide for the method of selecting members and filling vacancies;

(h) Shall provide for the portion of expenses to be assumed by the respective parties;

(i) Shall stipulate that a majority of the adjustment board members shall be competent to make an award, unless otherwise mutually agreed;

(j) Shall stipulate that adjustment boards shall meet regularly at such times and places as designated; and

(k) Shall provide for the method of advising the employees and carrier or carriers of the decisions of the board.

Second. Nothing in this Act shall be construed to prohibit an individual carrier and its employees from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish.

Approved, May 20, 1926.

EXHIBIT C

Awards rendered by train service boards of adjustment for the fiscal years (July 1 to June 30) 1922 to 1935

Territory	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	Total
East		38	118	44	53	88	37	42	190	115	182	126	97	122	108	1,360
West		181	552	359	400	562	363	316	410	473	656	418	646	599	78	6,013
Southeast		62	38	65	29	40	36	69	39	94	99	287	96	152	34	1,140
Southwest									142	119	168	164	96	104	15	808
Total		281	708	468	482	690	436	427	781	801	1,105	995	935	977	235	9,321

EXHIBIT D

[PUBLIC—NO. 442—73D CONGRESS]

[H.R. 9861]

AN ACT To amend the Railway Labor Act approved May 20, 1926, and to provide for the prompt disposition of disputes between carriers and their employees

* * * * * * *

"NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

"SEC. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

"(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 representative on any division of the Board.

"(c) 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 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 the passage of this Act, 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 section 2 hereof 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 (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 diem 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 ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, 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 pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, 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 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 Act 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, except insofar as they shall contain a money award. 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 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.

"(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 prima facie evidence of the facts therein stated, 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.

"(q) 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.

"(r) 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.

"(s) 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.

"(t) 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.

"(u) The Adjustment Board shall meet within forty days after the approval of this Act 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.

"(v) 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 Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

"(w) 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) hereof, with respect to a division of the Adjustment Board.

"Second. 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 Act, 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."

Approved, June 21, 1934.

EXHIBIT E

NUMBER OF AWARDS OF DIVISIONS OF NATIONAL RAILROAD ADJUSTMENT BOARD, 1934–APR. 30, 1935

1st division

Calendar year	With referee	Without referee	Total	Calendar year	With referee	Without referee	Total
1934		33	36	1951	741	164	905
1935	225	496	721	1952	764	130	894
1936	243	625	[1] 868	1953	451	146	597
1937	233	575	808	1954	281	64	345
1938	378	545	[2] 923	1955	305	128	433
1939	533	570	1,103	1956	251	375	626
1940	405	525	930	1957	268	344	612
1941	451	480	931	1958	255	202	457
1942	472	798	1,270	1959	276	90	366
1943	276	1,066	1,342	1960	231	135	366
1944	325	868	1,193	1961	196	126	322
1945	248	569	817	1962	124	39	163
1946	9	164	173	1963	122	37	159
1947	527	234	761	1964	93	35	[3] 128
1948	571	111	682	1965 [4]	21	78	99
1949	472	152	624				
1950	699	278	977	Total	10,446	10,182	20,628

[1] Includes 7 letter awards not assigned award numbers.
[2] Includes 6 letter awards not assigned award numbers.
[3] Includes 2 awards on each of 2 dockets.
[4] Covers 4 months, Jan. 1 through Apr. 30, 1965.

Source: Annual Reports of National Mediation Board, and available records.

2d division

Year ending June 30—	With referee	Without referee [1]	Total [1]	Year ending June 30—	With referee	Without referee [1]	Total [1]
1935		1	1	1952	73	19	92
1936	11	51	62	1953	99	16	115
1937	5	97	102	1954	73	31	104
1938	22	29	51	1955	132	23	155
1939	27	51	78	1956	112	11	123
1940	27	56	83	1957	283	10	293
1941	72	68	140	1958	259	7	266
1942	70	75	145	1959	269	3	272
1943	70	36	106	1960	110	7	117
1944	60	14	74	1961	270	8	278
1945	44	17	61	1962	165	13	178
1946	29	8	37	1963	213	5	218
1947	43	7	50	1964	260	1	261
1948	36	12	48	1965 [2]	161	2	163
1949	43	10	53				
1950	45	13	58	Total	3,134	712	3,846
1951	51	11	62				

[1] Does not include awards issued in withdrawn cases.
[2] Covers 10 months, July 1, 1964, through April 30, 1965.

Source: Annual reports of National Mediation Board, and available records.

3d division

Year ending June 30—	With referee	Without referee [1]	Total [1]	Year ending June 30—	With referee	Without referee [1]	Total [1]
1935	21	60	81	1952	401	30	431
1936	122	92	214	1953	344	19	363
1937	120	72	192	1954	396	24	420
1938	121	43	164	1955	290	31	321
1939	122	31	153	1956	253	11	264
1940	152	100	252	1957	258	15	273
1941	238	44	282	1958	311	14	325
1942	273	29	302	1959	233	10	243
1943	192	24	216	1960	309	3	312
1944	269	24	293	1961	342	17	359
1945	238	20	258	1962	534	10	544
1946	190	29	219	1963	768	18	786
1947	255	38	293	1964	893	4	897
1948	297	37	334	1965 [2]	716	8	724
1949	358	42	400				
1950	412	10	422	Total	9,848	930	10,778
1951	420	21	441				

[1] Does not include awards issued in withdrawn cases.
[2] Covers 10 months, July 1, 1964, through April 30, 1965.

Source: Annual reports of National Mediation Board, and available records.

4th division

Year ending June 30—	With referee	Without referee [1]	Total [1]	Year ending June 30—	With referee	Without referee [1]	Total [1]
1935		3	3	1952	59	7	66
1936				1953	80	7	87
1937				1954	66	8	74
1938		6	6	1955	37	4	41
1939		16	16	1956	55	8	63
1940	21	5	26	1957	45	4	49
1941	20	16	36	1958	74		74
1942	47	10	57	1959	85	4	89
1943	26	24	50	1960	41	18	59
1944	9	3	12	1961	33	13	46
1945	11	4	15	1962	73	8	81
1946	29	11	40	1963	91	6	97
1947	47	25	72	1964	83	7	90
1948	48	29	77	1965 [2]	52	1	53
1949	28	25	53				
1950	62	21	83	Total	1,267	298	1,565
1951	45	5	50				

[1] Does not include awards issued in withdrawn cases.
[2] Covers 10 months, July 1, 1964, through Apr. 30, 1965.

Source: Annual reports of National Mediation Board, and available records.

EXHIBIT F

NATIONAL RAILROAD ADJUSTMENT BOARD—NUMBER OF CASES DOCKETED, DECIDED, WITHDRAWN, AND PENDING, 1934 TO APR. 30, 1965

1st division

	Docketed	Decided	Withdrawn	Pending at end of year
Year ending June 30:				
1935	1,590	394	101	1,095
1936	1,294	862	66	1,461
1937	1,650	[1] 751	403	1,964
1938	1,546	[2] 898	431	2,181
1939	1,705	1,001	300	2,575
1940	2,429	1,070	329	3,290
1941	2,658	866	294	4,836
Calendar year:				
1941 [3]	1,001	475	80	446
1942	2,215	1,270	405	6,092
1943	1,778	1,342	1,508	5,020
1944	2,313	1,193	1,122	5,018
1945	1,345	817	2,017	3,529
1946	425	173	1,263	2,518
1947	808	761	660	1,905
1948	1,072	682	104	2,191
1949	1,702	624	244	3,025
1950	1,501	977	542	3,007
1951	1,561	905	165	3,498
1952	1,878	894	789	3,693
1953	1,177	597	1,299	2,974
1954	944	345	555	3,018
1955	878	433	294	3,169
1956	663	626	384	2,822
1957	808	612	588	2,430
1958	1,048	457	205	2,816
1959	929	366	302	3,077
1960	831	366	618	2,924
1961	706	322	254	3,054
1962	815	163	60	3,646
1963	637	159	244	3,880
1964	738	[4] 128	440	4,052
1965 [5]	212	99	44	4,120
Grand total	40,857	[1 2 4] 20,628	16,110	4,120

[1] Includes 7 letter awards not assigned award numbers.
[2] Includes 6 letter awards not assigned award numbers.
[3] July 1 through Dec. 31.
[4] Includes 2 awards on 2 different dockets.
[5] Through Apr. 30, 1965.

Source: Annual reports of National Mediation Board, and available records.

2d division

Year ending June 30—	Docketed	Decided	Withdrawn	Pending at end of year
1935	9	1		8
1936	73	62	5	
1937	105	102	18	22
1938	83	51	28	26
1939	111	78	27	32
1940	140	83	40	49
1941	150	140	30	29
1942	178	145	16	46
1943	126	106	25	41
1944	64	74	14	17
1945	83	61	11	28
1946	44	37	17	18
1947	54	50	6	16
1948	69	48	3	34
1949	63	53	10	34
1950	63	58	8	31
1951	95	62	7	57
1952	110	92	9	66
1953	109	115	6	54
1954	123	104	12	61
1955	183	155	22	67
1956	398	123	62	280
1957	347	293	77	257
1958	376	266	99	268
1959	397	272	111	282
1960	305	117	105	365
1961	216	278	15	288
1962	287	178	18	379
1963	217	218	23	355
1964	198	261	22	270
1965 [1]	153	163	5	256

[1] Covers 10 months, July 1, 1964, through Apr. 30, 1965.

NOTE.—The number of cases decided is not the same as the number of awards (which excludes awards in withdrawn cases) shown in exhibit E, inasmuch as in some instances a single award covered more than 1 case and in other instances more than 1 award was made in a single case. The number of cases docketed, and the number pending as of the end of the year, are as reported (through June 30, 1963) by the National Mediation Board in its annual reports. Because of variations in the basis on which such reports were prepared, there are apparent minor discrepancies in the figures for certain years, and the totals of columns will not balance exactly with the number of cases pending as of June 30, 1964.

Source: Annual reports of National Mediation Board, and available records.

3d division

Year ending June 30—	Docketed	Decided	Withdrawn	Pending at end of year
1935	150	81	3	66
1936	200	214	36	
1937	197	192	29	85
1938	201	164	43	79
1939	245	153	52	119
1940	327	252	45	194
1941	333	282	74	181
1942	406	302	69	216
1943	361	216	145	216
1944	332	293	91	164
1945	335	258	75	166
1946	337	219	80	204
1947	387	293	53	245
1948	407	334	40	338
1949	495	400	71	362
1950	420	422	32	328
1951	459	441	40	306
1952	575	431	33	417
1953	463	363	40	477
1954	404	420	33	428
1955	530	321	21	616
1956	1,170	264	67	1,455
1957	887	273	325	1,744
1958	763	325	80	2,102
1959	770	243	221	2,408
1960	615	312	312	2,399
1961	733	359	127	2,646
1962	773	544	144	2,731
1963	779	786	126	2,598
1964	715	897	219	2,197
1965 [1]	592	724	155	1,910

[1] Covers 10 months, July 1, 1964, through Apr. 30, 1965.

NOTE.—The number of cases decided is not the same as the number of awards (which excludes awards in withdrawn cases) shown in exhibit E, inasmuch as in some instances a single award covered more than 1 case and in other instances more than 1 award was made in a single case. The number of cases docketed, and the number pending as of the end of the year, are as reported (through June 30, 1963) by the National Mediation Board in its annual reports. Because of variations in the basis on which such reports were prepared, there are apparent minor discrepancies in the figures for certain years, and the totals of columns will not balance exactly with the number of cases pending as of June 30, 1964.

Source: Annual reports of National Mediation Board, and available records.

4th division

Year ending June 30—	Docketed	Decided	Withdrawn	Pending at end of year
1935	4	3		1
1936	3			
1937	8		2	6
1938	5	6		5
1939	22	16	9	2
1940	26	26	1	1
1941	40	36	1	4
1942	79	57	3	23
1943	40	50	10	3
1944	21	12	11	1
1945	24	15	3	7
1946	57	40	18	6
1947	81	72	7	8
1948	83	77	11	3
1949	91	53	8	33
1950	103	83	31	22
1951	58	50	10	20
1952	103	66	9	48
1953	87	87	16	32
1954	74	74	8	24
1955	59	41	15	27
1956	61	63	11	14
1957	96	49	11	50
1958	98	74	26	48
1959	146	89	22	83
1960	80	59	15	89
1961	98	46	35	106
1962	126	81	38	113
1963	96	97	48	64
1964	80	90	23	31
1965 [1]	85	53	15	48

[1] Covers 10 months, July 1, 1964, through Apr. 30, 1965.

NOTE.—The number of cases decided is not the same as the number of awards (which excludes awards in withdrawn cases) shown in exhibit E, inasmuch as in some instances a single award covered more than 1 case and in other instances more than 1 award was made in a single case. The number of cases docketed, and the number pending as of the end of the year, are as reported (through June 30, 1963) by the National Mediation Board in its annual reports. Because of variations in the basis on which such reports were prepared, there are apparent minor discrepancies in the figures for certain years, and the totals of columns will not balance exactly with the number of cases pending as of June 30, 1964.

Source: Annual reports of National Mediation Board, and available records.

EXHIBIT G

Number of special boards of adjustment created, by years, and the number of awards rendered by such boards

Year	Total		Involving operating employee organizations		Involving nonoperating employee organizations		Approximate number of cases decided during fiscal year
	Special boards	Awards	Special boards	Awards	Special boards	Awards	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1949	3	84	3	84	----------	----------	[1]
1950	3	1,240	3	1,240	----------	----------	[1]
1951	6	856	6	856	----------	----------	[1]
1952	11	5,527	10	5,527	1	----------	1,605
1953	39	4,259	38	4,258	1	1	3,250
1954	40	2,690	36	2,638	4	52	3,492
1955	34	2,784	29	2,502	5	282	3,623
1956	42	2,676	32	2,263	10	413	3,900
1957	50	3,309	40	3,062	10	247	2,500
1958	58	4,194	48	3,875	10	319	1,408
1959	51	2,755	35	2,272	16	483	3,552
1960	57	2,673	47	2,383	10	290	3,214
1961	52	1,431	44	1,317	8	114	2,539
1962	54	468	45	377	9	91	3,100
1963	39	466	34	404	5	62	3,244
1964	46	269	36	227	10	42	2,401
1965 [2]	24	1	18	----------	6	1	[1]
Total	609	35,682	504	33,285	105	2,397	37,828

[1] Record not reported.
[2] January to May.

NOTE.—The figures shown in columns 2 through 7 below have been compiled by the National Railway Labor Conference, based on special boards of adjustment of which it has information. The figures are not complete, particularly as to the numbers of awards rendered, inasmuch as the conference has not received information as to all such awards. The numbers of awards shown in columns 3, 5 and 7 relate to the year in which the special board of adjustment rendering the awards was created, and not necessarily to the year in which the awards were rendered. The numbers of cases shown in column 8 have been compiled from the annual reports of the National Mediation Board, and relate to the fiscal year (ending June 30 of the year shown in column 1) in which the cases were decided.

EXHIBIT H

AGREEMENT BETWEEN THE CHICAGO AND NORTH WESTERN RAILWAY COMPANY AND ITS FORMER CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY'S EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF RAILROAD TRAINMEN

For the purpose of disposing of pending time claims and grievances, it is agreed by and between the parties hereto that:

1. There shall be established a Special Board of Adjustment, under the provisions of the Railway Labor Act, as amended, which shall be known as Chicago and North Western Board of Adjustment (hereinafter referred to as the "Board"). Such board shall have jurisdiction over claims and grievances submitted to it under his agreement, arising out of the interpretation and application of agreements which are temporarily being applied concerning rates of pay, rules or working conditions between the Chicago and North Western Railway Company and the former Chicago, St. Paul, Minneapolis and Omaha Railway Company's employees of said carrier represented by the Brotherhood of Railroad Trainmen, and such other disputes as may be additionally agreed upon.

2. The Board shall consist of three (3) members. One member shall be selected by the carrier and shall be known as the "Carrier Member." One member shall be selected by the organization and shall be known as the "Employee Member." The Carrier Member and the Employee Member shall be known as the "Party Members." The third member, who shall be Chairman of the Board, shall be a neutral person, unbiased as between the parties. The Party Members of the Board may be changed from time to time, and at any time, by the respective parties designating them. The initial Carrier Member and the initial Employee Member shall be named by the carrier and the organization, respectively, within ten (10) days from the date either party shall serve notice in writing upon the other party of its desire that the Carrier Member and Employee Member of such Board be named.

3. The Carrier Member and the Employee Member shall meet in Chicago, Illinois, within fifteen (15) days from the date of designation of the Carrier Member and Employee Member, as provided in paragraph 2 hereof, for the purpose of trying to select the neutral member of the Board. If the Party Members can jointly agree upon the Neutral Member and the person so selected accepts the appointment, then such person shall serve as Neutral Member of the Board. If within ten (10) days after such first meeting the Party Members are unable to agree upon a neutral member, they shall at once jointly request the National Mediation Board to appoint the neutral member. In case of a permanent or temporary vacancy on the Board, with respect to either Party Members or the Neutral Member, the vacany shall be filled in the same manner as the original selection.

4. The Board shall meet in Chicago, Illinois, within thirty (30) days after the Neutral Member is selected, subject to the convenience of the Neutral Member. The Board shall establish rules of procedure by which it shall be governed. Thereafter, the Board shall meet at regularly stated times and continue in session until all matters submitted to it under this agreement are disposed of.

5. The compensation and expenses of the Carrier Member shall be borne by the Carrier. The compensation and expenses of the Employee Member shall be borne by the organization. All other expenses of the Board and any part of the compensation or expenses of the Neutral Member which are not borne by the National Mediation Board shall be borne one-half by the carrier and one-half by the organization.

6. The Board shall have jurisdiction only of claims and grievances submitted to it under the terms of this agreement. A list, to be designated as "Original List," of all cases to be submitted to the Board shall be prepared by mutual agreement between the parties. In addition, there may be submitted to the Board a "Supplemental List," or "Lists," by the parties by mutual agreement prior to the final meeting of the Board. The cases contained in the "Original List" and the "Supplemental List," or "Lists," shall include only cases on which decisions have been rendered prior to the date submitted to the Board by the highest officer of the carrier designated to handle appeals on such cases.

7. The Board shall not have jurisdiction of disputes growing out of requests for changes in rates of pay, rules or working conditions, or protests, and shall not have authority to change existing agreements covering rates of pay, rules or working conditions.

8. The Board shall hold hearings on each claim or grievance submitted to it. Due notice of such hearings shall be given the parties. The parties may present, either orally or in writing, statement of facts, supporting evidence and data, and argument of their position with respect to each case being considered by the Board.

The Chairman may require any additional pertinent information as he desires from either party.

9. The Board shall make Findings and render an award in each case submitted to it. Such Findings and awards shall be in writing and a copy shall be furnished the respective parties to the controversy. Such awards shall be final and binding on both parties to the dispute. Each member of the Board shall have one vote, and a majority of the Board shall be competent to render an award or make such other rulings and decisions necessary to carry out the functions of the Board. In case a dispute arises involving an interpretation of an award while the Board is in existence, or upon recall within thirty (30) days thereafter, the

Board rendering the award upon the request of either party, shall interpret the award in the light of the dispute.

10. Claims and grievances which have been appealed up to and including the highest officer of the carrier, which said claims and grievances involve employees not subject to the rules governing rates of pay, rules and working conditions of agreements in effect between this carrier and the Brotherhood of Railroad Trainmen, if submitted to this Special Board of Adjustment hereby established, will be disposed of on the basis of the awards issued in such claims, without constituting a precedent as to the application or interpretation of such other agreements.

11. The Board hereby established shall continue in existence until it has disposed of all claims and grievances submitted to it under this agreement, after which it shall cease to exist, except for interpretations of its awards, as provided above.

Signed at Chicago, Illinois, this 17th day of April 1960.

For the Brotherhood of Railroad Trainmen:

(Signed) LOUIS CARDINAL,
General Chairman.

For the Chicago and North Western Railway Company:

(Signed) T. M. VAN PATTEN,
Director of Personnel.

AGREEMENT BETWEEN THE ILLINOIS CENTRAL RAILROAD COMPANY AND BROTHERHOOD OF RAILROAD TRAINMEN

It is naturally agreed between the parties hereto that, subject to the approval of the terms of this agreement by the National Mediation Board:

(a) There is established a Special Board of Adjustment, hereinafter referred to as the "Board," in accordance with Section 3, Second, of the Railway Labor Act.

The Board shall have jurisdiction of, and shall decide, claims and grievances, including discipline cases, arising out of the interpretation or application of agreements governing wages, rules, or working conditions of trainmen, yardmen, switchtenders and car retarder operators which, after being docketed by the First Division of the National Railroad Adjustment Board, will be withdrawn without prejudice from the First Division and submitted to the Board by the mutual consent of the parties; but the decisions in such cases shall not be considered precedents.

(b) The Board shall consist of three members: One member to be selected by the company and one member to be selected by the union. The third member, who shall be chairman and neutral member of the Board, shall be selected by two members representing the company and the union, or as provided in paragraph (c) hereof.

(c) The company and the union shall appoint their respective members within fifteen days of the signing of this agreement, and the two members shall meet within thirty days thereafter for the purpose of selecting the third member. If the two members selected by the parties fail to agree upon a third member within twenty days from the date of their first meeting, notice of such failure shall be certified by both members jointly to the National Mediation Board with a request that the National Mediation Board name a neutral person as the third member of this Special Board of Adjustment.

(d) The compensation and expenses of the company member shall be borne by the company. The compensation and expenses of the employee member shall be borne by the union. The compensation and the expenses of the third or neutral member shall be set and paid by the National Mediation Board. All other expenses of the Board that are mutually agreed to shall be borne half by the company and half by the union.

(e) There is attached hereto as Attachment "A" a list of the claims or grievances which, after being docketed by the First Division of the National Railroad Adjustment Board will, by mutual consent of the parties, be withdrawn from the First Division and submitted to the Board for hearing and decision. Additional cases docketed by the First Division may, by mutual

consent of the parties, be withdrawn and added from time to time to the list identified as Attachment "A". Submission of these claims or grievances to the Board shall not be construed to prejudice or constitute a waiver by either party of contentions advanced in its submission to the First Division or of contentions with respect to the Board's jurisdiction. No case may be withdrawn from the consideration of the Board except by mutual consent of the parties involved.

(f) The Board shall meet at Chicago, Illinois, and shall begin hearings within forty-five days from the date of selection of the neutral member, or as soon thereafter as consistent.

(g) The parties and the Board shall be governed by the following rules:

1. The cases shall be considered in the order of their appearance in Attachment "A". No more than five cases shall be heard prior to rendition of awards on all prior cases considered.

2. The petition and the answer shall be those submitted to the First Division. The reply (rebuttal by the petitioner) shall be the reply submitted to the First Division except that the petitioner may revise it to include treatment of precedent settlements or awards made since the date the petition was submitted to the First Division. The respondent may, if it wishes, make a surrebuttal which, however, shall be limited to treatment of precedent settlements or awards made since the date the petition was submitted to the First Division and to direct response to the reply. The revised reply must be submitted to the respondent at least thirty days prior to the date the case is to be heard, and the surrebuttal shall be submitted to the petitioner within at least fifteen days prior to the date the case is to be heard.

3. Evidence not presented in accordance with the preceding paragraph or evidence not contained in the written submissions of the parties will not be considered.

4. At the oral hearing the petitioner will present its petition and rebuttal before the respondent is heard. After the petition has been heard, the respondent will present its answer and surrebuttal. The oral presentation shall be limited to thirty minutes for the petitioner and thirty minutes for the respondent, exclusive of time devoted to answering questions of the Board about their written briefs.

5. Either or both the petitioner and the respondent may, if they wish, give the Board at the time of the hearing briefs, the contents of which must be limited to a summary of their written briefs and which shall not exceed in length three letter-size pages, double space.

6. Only members of the Board will be permitted to question persons presenting oral statements on behalf of the petitioner and respondent.

7. The neutral shall be expected to read the submissions of the parties prior to convening the Board for oral hearing on a case that is to be heard at that hearing.

8. At the executive session subsequent to oral hearing, the partisan members of the Board shall each have 10 minutes uninterrupted by the other to review arguments for the benefit of the neutral. Unless extended by mutual agreement, discussion by the Board of any one case in executive session shall be limited to one hour prior to the neutral's preparing a proposed award and to one hour following the neutral's preparing a proposed award.

(h) Except as provided for herein, the Board shall make its own rules on procedure.

(i) The provisions of this agreement must be compiled with and the Board must render the award within fifteen days after close of hearing on that case unless an exception is mutually agreed upon by the company and the union board members. The validity of an award may be challenged only on the basis that the Board failed to comply with the provisions of this agreement. It is understood that no award shall be challenged for trivial irregularity or clerical error, going only to form and not to substance, and that challenged awards shall be construed liberally with a view to favoring their validity.

Findings and Award shall be in writing and copies shall be furnished the respective parties to the dispute. The rendition of the awards shall be in accordance with the provisions of Section 3, First of the Railway Labor Act, and the awards shall have the same force and effect as awards of the National Railroad Adjustment Board except as provided in paragraph (a). Each member of the Board shall have one vote, and a majority of the Board shall be competent to render an award. In case a dispute arises involving the interpretation of an award while the Board is in existence, or within sixty days thereafter, the Board, upon request of either party, will reconvene and interpret the award in the light of the dispute.

(j) The Board hereby established shall continue in existence until it has disposed of all claims and grievances submitted to and not withdrawn from it under this agreement, or until July 1, 1964, whichever occurs first, after which it will cease to exist except for interpretation of its awards as provided in paragraph (i). The existence of the Board may be extended by mutual consent of the parties to this agreement.

(k) The union and/or the company may from time to time make a substitution or change in its representative on the Board. In the event of inability of the neutral member to serve, a neutral substitute member is to be selected in the same manner as the original neutral member.

(l) The Board shall not have jurisdiction of disputes growing out of requests for changes in rates of pay, rules or working conditions, nor shall it have authority to depart from applicable agreements or agreed upon interpretations.

(m) The time limits provided in this agreement may be extended by agreement.

Signed at Chicago, Illinois, April 15, 1963.

For: Brotherhood of Railroad Trainmen:

(Signed) S. VANDER HEI,
Vice President.

(Signed) M. S. STUCKEY,
General Chairman.

For: Illinois Central Railroad Company:

(Signed) W. J. CASSIN,
Manager of Personnel.

MEMORANDUM OF AGREEMENT BETWEEN THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY AND THE ORDER OF RAILROAD TELEGRAPHERS

It is mutually agreed between the parties hereto that:

(a) Effective July 22, 1963, there is established (in accordance with Section 3, Second of the Railway Labor Act) a Special Board of Adjustment, hereinafter referred to as the "Board." This Board shall have jurisdiction of, and shall hear and decide, claims and grievances (including discipline cases) arising out of the interpretation or application of agreements governing wages, rules, or working conditions which are submitted to the Board.

This Board shall not have jurisdiction of disputes growing out of requests for change in rates of pay, rules, and working conditions and shall not have authority to change existing Agreements governing rates of pay, rules, and working conditions.

(b) The Board shall consist of three members: one member to be selected by the Carrier and one member to be selected by the Organization. The third member, who shall be Chairman of the Board, shall be selected by the two members representing the Carrier and the Organization, or as provided in paragraph (c) hereof.

(c) The Carrier and the Organization shall appoint their respective members within ten days of the date of this Agreement and the two members shall meet within ten days thereafter for the purpose of selecting the third member. If the two members selected by the parties fail to agree upon a third member within fifteen days from the date of their first meeting notice of such failure shall be certified by both members jointly or by either member separately to the National Mediation Board with a request that the National Mediation Board

name a neutral person as the third member of this Special Board of Adjustment.

(d) The compensation and expenses of the Carrier Member shall be borne by the Carrier. The compensation and expenses of the Employee Member shall be borne by the Organization. The compensation and expenses of the Neutral Member shall be borne in accordance with the provisions of Section 3 of the Railway Labor Act as amended. Such other compensation and expenses as is not borne by the National Mediation Board shall be borne half by the Carrier and half by the Organization.

(e) There is attached hereto, as Supplement "A", a list of the claims or grievances that are to be heard and decided by this Board. Attachment "A" shall include all cases submitted to the Third Division, National Railroad Adjustment Board, which are now pending before that Division and all cases shall be withdrawn from the Third Division except cases that have been progressed to the point where they have been placed in the hands of a referee for a decision prior to the date of this Agreement.

In addition, there may be submitted to the Board by either party a "Supplemental List" of any claims or grievances on which decision is rendered by the highest officer of the Carrier designated to handle appeals on such matters prior to the date of the first meeting of the Board, as provided in Section (f) hereof. No other claims or grievances shall be submitted to the Board unless otherwise mutually agreed.

(f) The Board shall meet in Denver, Colorado, and unless another date is mutually agreed upon, begin hearings within fifteen days from the date on which the third member of the Board is designated.

(g) The Board shall make its own rules governing procedure and shall have the authority to employ secretarial and other assistance and incur such other expense as it deems necessary for the proper conduct of its business.

(h) The Board shall have authority to require the production of such additional evidence, either oral or written, as it may desire from either party.

(i) The Board shall make findings and render an award in each case submitted to it within fifteen days after the close of the hearings upon such claim or group of claims with the exception of cases that may be withdrawn. Findings and award shall be in writing and copies shall be furnished the respective parties to the dispute. The rendition of such awards shall be in accordance with the provisions of Section 3, First of the Railway Labor Act and they shall have the same force and effect as awards of the National Railroad Adjustment Board. Each member of the Board shall have one vote and a majority of the Board shall be competent to render an award or make such other rulings and decisions as may be necessary to carry out the functions of the Board. In case a dispute arises involving the interpretation of an award while the Board is in existence, or within one hundred and twenty (120) days thereafter, the Board, upon request of either party, will reconvene and interpret the award in the light of the dispute.

(j) The Board hereby established shall continue in existence until it has disposed of all claims and grievances submitted to it under this Agreement, after which it will cease to exist except for interpretation of its awards as provided in paragraph (i) next above.

(k) The Organization and/or the Carrier may from time to time make a substitution or change its representative on the Board.

(l) The time limits provided in this Agreement may be extended by Agreement.

Signed at Denver, Colorado, this 22nd day of July, 1963.

For the employes:

(Signed) D. T. ECHOLS, *General Chairman, O.R.T.*

For the carrier:

(Signed) E. B. HERDMAN, *Director of Personnel.*

Supplement A

ORT file	General chairman's file	Carrier's file	Docket No.
2600	C-437 R-1631	TE-39-49	TE-10452.
2728	R-1053	TE-1-58	TE-10816.
2789	R-1072	TE-6-58	TE-11059.
2818	R-1083	TE-9-58	TE-11162.
2947	C-1148	T&T-1-59	TE-11527.
2999	R-1151	TE-1-59	TE-11760.
2999	R-1157	TE-3-59	TE-11760.
3018	R-1160	TE-4-59	TE-11771.
3082	C-1153	TE-6-59	TE-11955.
3109	R-1142	TE-7-59	TE-12089.
3119	R-1190	TE-8-59	TE-12100.
3119	R-1215	TE-5-60	TE-12100.
3244	R-1213	TE-6-60	TE-12520.
3286	R-1231	TE-11-60	TE-12678.
3313	R-1226	TE-14-60	TE-12697.
3391	R-1241	TE-1-61	TE-12982.
3621	R-1268	TE-9-61	TE-13487.
3650	R-1277	TE-1-62	TE-13546.
3701	R-1284	TE-5-62	TE-13667.
3694	R-1285	TE-6-62	TE-13679.
3823	R-1296	TE-13-62	TE-13960.
	R-1305	TE-1-63	
	R-1306	TE-2-63	
	R-1307	TE-3-63	
	R-1310	TE-5-63	
	R-1311	TE-6-63	
	R-1313	TE-7-63	
	R-1315	TE-8-63	
	R-1319	TE-12-63	
	R-1322	TE-14-63	

For the employees:

(Signed) D. T. ECHOLS,
General Chairman, ORT.

For the carrier:

(Signed) E. B. HERDMAN,
Director of Personnel.

AGREEMENT BETWEEN ALTON AND SOUTHERN RAILROAD AND THE EMPLOYEES THEREOF REPRESENTED BY BROTHERHOOD OF RAILROAD TRAINMEN

For the purpose of disposing of pending time claims and grievances, it is agreed:

A. There shall be established a Special Board of Adjustment under the provisions of the Railway Labor Act, as amended, which shall be known as the Alton and Southern Special Board of Adjustment, hereinafter referred to as the "Board". Such Board shal lhave jurisdiction over claims and grievances submitted to it under this Agreement, arising out of the interpretation of agreements governing rates of pay, rules, and working conditions between the Alton and Southern Railroad and the employees of said Carrier represented by the Brotherhood of Railroad Trainmen.

B. The Board shall consist of three members. One shall be selected by the Carrier and shall be known as the "Carrier Member". One shall be selected by the Organization representing the employees and shall be known as the "Employee Member". The third member, who shall be Chairman of the Board, shall be a neutral person, unbiased as between the parties. Party members of the Board may be changed, from time to time, and at any time, by the respective parties designating them. The initial Carrier member and Employee member shall be named by the Carrier and Organization, respectively, within ten (10) days after the execution of this Agreement and the two members shall meet at East St. Louis, Illinois, within twenty (20) days thereafter for the purpose of selecting the third member.

C. If the party members can agree upon the neutral member, and the person so selected accepts the appointment, then such person shall serve on the Board. If, within ten (10) days after such first meeting, the party members are unable to agree upon the neutral member, they shall jointly request the National Mediation Board to appoint the neutral member. In case of a permanent or temporary vacancy on the Board, with respect to either party members or the neutral, the vacancy shall be filled in the same manner as in the original selection.

D. The Board shall meet at East St. Louis, Illinois, unless otherwise agreed by the parties. Rules of procedure will be established in accordance with that portion of the rules of procedure established by Circular B of the First Division, National Railroad Adjustment Board, dated October 14, 1949, as follows:

"Claims will be submitted to the neutral member ex parte by the Organization, at the same time they will furnish the Carrier a copy of their submission. The Carrier will have thirty (30) days from the date of notification by the neutral member that such submission has been filed in which to answer such submission and shall, at the time of filing such answer, furnish copy of such answer to the Organization. The Organization shall then have thirty (30) days from the date of notification by the neutral member that such answer has been received in which to file a reply to such answer if deseired and shall, at the time of filing such answer, furnish copy of the answer to the Carrier. Thereafter, the Board shall meet at regularly stated times for oral hearings and continue in session, subject to such recesses as it may determine, until all matters submitted to it under this Agreement are disposed of. The Board shall have the authority to employ a secretary and other assistance and incur such other expense as it deems necessary for the proper conduct of business."

E. The compensation and expenses of the Carrier member shall be borne by the Carrier. The compensation and expenses of the Employee member shall be borne by the Organization. Such other compensation and expenses as are not borne by the National Mediation Board shall be borne half by the Carrier and half by the Organization.

F. The Board shall have jurisdiction only of claims and grievances submitted under the terms of this Agreement. Such claims and grievances may include only the unsettled cases which have been submitted to and on which decision has been rendered prior to the date of this Agreement by the highest officer of the Carrier designated to handle appeals on such matters. All such claims and grievances must be submitted by the Organization to the neutral member before the expiration of one (1) year from the effective date of this Agreement.

G. The Board shall not have jurisdiction of disputes growing out of request for change in rates of pay, rules, and working conditions, and shall not have authority to change existing agreements concerning rates of pay, rules, and working conditions.

H. The Board shall hold hearing on each claim or grievance submitted to it. Due notice of such hearings shall be given the parties. At such hearings the parties may be heard in person, by counsel, or by other representatives, as they may elect. The parties may present, either orally or in writing, additional statements of fact, witnesses, supporting evidence and data, and argument of their position with respect to each case being considered by the Board. The Board shall have authority to require the production of such additional evidence, either oral or written, as it may desire from either party.

I. The Board shall make findings and render an Award in each case submitted to it within a reasonable time from the date of close of hearing of the case. No case may be withdrawn after hearing thereon has begun, except by mutual consent of the parties. Such findings and Award shall be in writing, and a copy shall be furnished the respective parties to the controversy. Such Awards will be, in all respects, considered by the parties hereto as having the same force and effect as Awards of the First Division, National Railroad Adjustment Board, as provided by paragraphs (m) and (p), Section 3, First of the Railway Labor Act, as amended, and subject to the limitations of paragraph (q) of Section 3, First of said Act. Each member of the Board shall have one vote, and a majority of the Board shall be competent and sufficient to render an Award or make such other rulings and decisions necessary to carry out the functions of the Board. In case a dispute arises involving an interpretation of an Award while the Board

is in existence or upon recall within thirty (30) days thereafter, the Board, upon request of either party, shall interpret the Award in light of the dispute.

J. The Board hereby established shall continue in existence until it has disposed of all claims and grievances submitted to it under this Agreement after which it shall cease to exist, except for interpretation of its Awards as above provided.

Signed at East St. Louis, Illinois, this 3rd day of April 1961.

For the Brotherhood of Railroad Trainmen:

(S) FRANK ZAMARIONI,
General Chairman.

For Alton and Southern Railroad:

(S) E. J. MAHER,
Director of Personnel.

Approved:

(S) A. L. LENNY,
Vice President and General Manager.

EXHIBIT I

MEMORANDUM

The chief executive officers of the national railway labor organizations representing employees within jurisdiction of the Third Division, N.R.A.B., and the three territorial carrier committees for the National Railroad Adjustment Board are agreed on the following:

One board of ten members, supplemental to the Third Division, will be established to commence operations June 1, 1961, under the provisions of Section 3 of the Railway Labor Act with authority to handle cases now on the docket of the Third Division of the National Railroad Adjustment Board, assigned to them by such Third Division, and such additional cases as may be assigned to them by such Division, as hereinafter provided. Five of such members will be selected by the carriers and five by the national labor organizations of employees in the same manner as members of the Third Division are selected under Section 3, First (h) of said Act.

In assigning cases to such supplemental board, the Third Division shall follow the following procedure:

1. Permanent Board will continue to handle all cases up to the deadlocking thereof after files close.

2. Permanent Board will continue to prepare lists, comprised of a minimum of thirty dockets each, selected in order of their closing dates, as at present, and divided among the crafts about as follows:

Clerks	7
Telegraphers	7
Maintenance of Way	6
Signalmen, etc	5
Pullman Conductors, Dispatchers, etc	5

3. Permanent Board will turn over lists and files to Supplemental Board, when requested, for handling to a conclusion, including certification of lists to National Mediation Board for appointment of Referees, under present procedural rules. Awards of Supplemental Board will be headed Third Division (Supplemental) and numbered consecutively with Permanent Board Awards.

4. Permanent Board will add out-of-service cases to its own lists as at present.

5. Executive Secretary and staff will function for both Boards.

The chief executive officers of the labor organizations and the three territorial carrier committees signatory hereto will review the matter of procedure on or before June 1, 1962.

It is agreed that such supplemental board shall be established for a period of two years from June 1, 1961, provided, however, it may be terminated on or after

June 1, 1962, by mutual agreement. It is further agreed that the supplemental board may be continued beyond June 1, 1963, if the parties mutually agree to do so.

Signed this 28th day of March 1961, in the City of Washington, D.C.

Territorial Committees for the National Railroad Adjustment Board:

EASTERN COMMITTEE FOR THE N.R.A.B.
By W. S. MARGILL, *Chairman.*
WESTERN COMMITTEE FOR THE N.R.A.B.
By T. SHORT, *Chairman.*
SOUTHEASTERN COMMITTEE FOR THE N.R.A.B.
By R. C. LANTEN, *Chairman.*

Witness:

FRANCIS A. O'NEILL,
Chairman, National Mediation Board.
THOMAS A. TRACY,
Executive Secretary, National Mediation Board.

Committee representing Labor Organizations Participating in Third Division, N.R.A.B.:

GEO. M. HARRISON,
Grand President, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.
H. C. CORTLY,
President, Brotherhood of Maintenance of Way Employes.
G. E. LEIGHTY,
President, Order of Railroad Telegraphers.
JESSE CLARK,
President, Brotherhood of Railroad Signalmen.
R. C. COUTTS,
President, American Train Dispatchers Association.

EXHIBIT J

Number of awards of regular board and of supplemental board, 3d division, National Railroad Adjustment Board, July 1, 1962, to Apr. 30, 1965

Year ending June 30—	Regular Board	Supplemental Board	Total
1962	289	255	544
1963	359	427	786
1964	353	544	897
1965 [1]	320	404	724
Total	1,321	1,630	2,951

[1] Covers 10 months, July 1, 1964, through Apr. 30, 1965.

NOTE.—These figures do not include awards issued in withdrawn cases.

EXHIBIT K

NATIONAL RAILWAY LABOR CONFERENCE,
Chicago, Ill., May 31, 1963.

CIRCULAR NO. 1

ALL RAILROADS:

An understanding has been reached with the labor organizations subject to the jurisdiction of the Third Division, National Railroad Adjustment Board, as to an optional procedure for further handling of cases now pending before that Division, in a sincere effort to reduce the backlog of pending cases to workable proportions. The procedure we are suggesting to the railroads, and the chief

executives of the labor organizations above referred to are suggesting to their system committees, is as follows:

> If a labor organization desires to further discuss cases now pending before the Third Division for the purpose of making another attempt to dispose of such cases on the property, the employee representative will request the officer of the carrier designated to handle such disputes to review them in a sincere endeavor to accomplish the purpose herein referred to.
>
> On receipt of such a request the carrier officer should carefully examine the cases referred to him and thus determine whether they may be subjected to the suggested procedure. There are certain types of disputes that may not be appropriate for such disposition. These include (*a*) an issue of jurisdiction, (*b*) interest of a third party in the result, (*c*) other cases involving issues or principles which in the opinion of either the representative of the labor organization or the representative of the carrier are not susceptible to special board of adjustment disposition, or (*d*) cases involving an interpretation or application of the following provisions of national rules agreements:
>
> Agreement of December 17, 1941, and all amendments thereto (vacations).
> Agreement of August 21, 1954, articles II, IV, V, and VI.
> Agreement of August 19, 1960, article III.
> Agreement of June 5, 1962.

You will receive a separate letter in regard to the disputes committees that will handle disputes arising out of these national agreements.

The officer representing the carrier may suggest, preferably in writing, the inclusion of other disputes (other than those suggested by the labor organization representative) now docketed with the Third Division, it being understood that the inclusion of any dispute requires the concurrence of both the labor organization and the carrier. As above indicated, the disputes it is agreed will be submitted to this procedure will be discussed and an effort will be made to dispose of them, with the further understanding that those disputes not so disposed of will be submitted to a special board of adjustment, with a neutral participating, for final and binding disposition.

Unless the parties agree on some other form of agreement creating a special board of adjustment, it is suggested that the form customarily suggested by the National Mediation Board should be followed.

In carrying out the foregoing suggestions careful attention must be given to the following:

> 1. When an understanding has been definitely reached as to the disputes that will be subjected to this procedure, the executive secretary of the Third Division will be promptly notified by the party filing the dispute and be requested to hold such cases in abeyance until he receives further advice from the party.
>
> 2. When disputes are disposed of by the parties in direct negotiations, said parties will jointly notify the executive secretary of the Third Division and request that such disputes be withdrawn.
>
> 3. When disputes are disposed of by a special board of adjustment the executive secretary of the Third Division will be jointly notified by the parties and the disputes withdrawn from the docket of the Third Division.
>
> 4. If, after handling on the property, all disputes have been disposed of with the exception of just a small number, which would not warrant the creation of a special board of adjustment, and the parties so agree, the executive secretary of the Third Division will be requested to restore such cases to its working calendar in the same position with respect to other pending cases as such disputes occupied when they were first set aside in abeyance pending handling in conformity with the procedure herein referred to.
>
> 5. Inasmuch as the chief executives of each of the organizations participating are the only officers of the organization authorized to file or handle such disputes with the Third Division or to withdraw such disputes the notices must be given by or authorized by the chief executive of the organization concerned.

In the event, after handling in direct negotiations, a limited number of disputes remain unsettled involving more than one labor organization subject to the jurisdiction of the Third Division, separate agreements may be made with each

organization, creating special boards of adjustment, with the understanding that one neutral will be assigned to dispose of all of these disputes which should be handled in unbroken sequence, thus disposing of such disputes without undue delay and unnecessary expense. If necessary to resort to this procedure, it should be understood that participation before the neutral will be confined, on the part of the labor organization representatives, to the representative or representatives interested in the particular dispute.

As stated in the first paragraph of this communication, it is optional as to whether a carrier or a labor organization will agree to this suggested procedure. However, the necessity of eliminating the serious backlog of disputes that are now docketed with the Third Division, National Railroad Adjustment Board, is so compelling that we urge each carrier to give most profound consideration to active participation, and we are certain that the chief executives of the interested labor organizations will conscientiously carry out the commitments mutually exchanged in an endeavor to make this constructive effort successful.

Will you please keep us informed as to further developments, and any questions that may arise should be promptly referred to the undersigned.

Yours truly,

J. E. WOLFE, *Chairman.*

EXHIBIT L

NATIONAL RAILWAY LABOR CONFERENCE,
Chicago, Ill., October 11, 1963.

CIRCULAR No. 5

ALL RAILROADS:

Referring to our Circular No. 1 of May 31, 1963, concerning the cases now pending before and the functioning of the Third Division, National Railroad Adjustment Board:

There is attached copy of Memorandum Agreement dated May 31, 1963, which has been entered into with the—

Brotherhood of Railway and Steamship Clerks,
Brotherhood of Maintenance of Way Employees,
The Order of Railroad Telegraphers,
Brotherhood of Railroad Signalmen,

providing for the establishment of a Disputes Committee for the purpose of disposing of disputes involving interpretation or application of the following provisions of national agreements:

Agreement of December 17, 1941, and all amendments thereto (Vacations).
Agreement of August 21, 1954, Articles II, IV, V, and VI.
Agreement of August 19, 1960, Article III.
Agreement of June 5, 1962.

Your particular attention is directed to paragraphs 2 and 8 of the Memorandum Agreement which provide:

"2. Any dispute as to the interpretation or application of the following designated provisions of national agreements, that is:

* * * * * * *

not settled on the property may be referred, in conformity with the procedures adopted to implement this agreement, to the Disputes Committee (a) jointly by a railroad (or railroads) and one or more of the labor organizations parties hereto, (b) ex parte by a railroad (or railroads), or (c) ex parte by one or more of such organizations."

"8. When a case which has been docketed with the Third Division of the National Railroad Adjustment Board is submitted to the Disputes Committee, the party or parties submitting it will so notify the Executive Secretary of the Third Division and request that the case be held in abeyance pending action by the Disputes Committee. When the Disputes Committee has decided such case, the party or parties submitting it will so notify the Third Division, furnishing it a copy of the decision. If the decision disposes of all issues in the case, the Division will issue an award dismissing it. If an issue or issues not arising out of the interpretation or application of the provisions of the national agreements referred to in Section 2 hereof remains unsettled, either party to the dispute may request the Division to restore the case to its working calendar, in the

same position with respect to other pending cases as it occupied when set aside to be held in abeyance and proceed to make an award disposing of the remaining issue or issues."

There also is attached copy of procedure to be followed in submitting disputes to the Disputes Committee which has been agreed upon pursuant to paragraph 2 of the Memorandum Agreement.

In view of the compelling need to eliminate the serious backlog of disputes that are now docketed with the Third Division, National Railroad Adjustment Board, it is urged that each railroad having disputes pending before the Third Division which fall within the scope of the attached Memorandum Agreement take appropriate action for their handling under the Disputes Committee procedure.

Yours truly,

J. E. WOLFE, *Chairman.*

MEMORANDUM

Agreement made this 31st day of May 1963, between the Eastern Committee for the National Railroad Adjustment Board, the Western Committee for the National Railroad Adjustment Board, and the Southeastern Committee for the National Adjustment Board, hereinafter called the "Carriers," and the—

Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employes,
The Order of Railroad Telegraphers,
Brotherhood of Maintenance of Way Employes,
Brotherhood of Railroad Signalmen,

herinafter called the "Employees":

1. A board, hereinafter referred to as the Disputes Committee, consisting of twelve members, six appointed by the Carriers and six appointed by the Employees, will be established. It is understood Carriers or Employees may change their members on such board from time to time.

2. Any dispute as to the interpretation or application of the following designated provisions of national agreements, that is:

Agreement of December 17, 1941, and all amendments thereto (Vacations),
Agreement of August 21, 1954, Articles II, IV, V, and VI,
Agreement of August 19, 1960, Article III,
Agreement of June 5, 1962,

not settled on the property may be referred, in conformity with the procedures adopted to implement this agreement, to the Disputes Committee (a) jointly by a railroad (or railroads) and one or more of the labor organizations parties hereto, (b) ex parte by a railroad (or railroads), or (c) ex parte by one or more of such organizations.

3. The jurisdiction of the Disputes Committee is limited to rendering decisions on specific disputes involving the interpretation and application of the agreement provisions specified above.

4. The submission of a dispute to the Disputes Committee in conformity with this agreement, and procedures adopted to implement it, within the time limits referred to in Article V(c) of the Agreement of August 21, 1954, will be considered to be in compliance with the requirements therein stipulated.

5. The Disputes Committee will meet within sixty days after this agreement is executed and thereafter at least twice annually, between January 1 and June 30, and between July 1 and December 31, if any disputes are to be decided. A majority vote of the members of the Committee shall be necessary to decide a dispute. In the event the members of the Committee are unable to reach a decision with respect to any case within its jurisdiction, the Committee shall endeavor to agree upon the selection of a neutral referee to serve with the Committee and act as a member thereof in the disposition of such case. Should the Committee be unable to agreee or fail to agree upon the selection of a neutral referee, any six members of the Committee may request the National Mediation Board to appoint a neutral referee.

6. Any decision of the Disputes Committee shall be final and binding upon all parties to the dispute.

7. Unless otherwise agreed to by the Disputes Committee, disputes which have been duly submitted to the Committee, in conformity with the procedures

adopted to implement this agreement, between January 1 and June 30, both inclusive, in any year shall be decided or deadlocked between July 1 and December 31 of that year; and such disputes as are so submitted between July 1 and December 31 of any year, both inclusive, shall be decided or deadlocked between January 1 and June 30 of the following year. Should a party hereto fail or refuse on any occasion to select its member to serve on the Committee, or fail or refuse to meet within the time limits, then the representatives of the other party may apply to the National Mediation Board to appoint a neutral referee to decide such dispute or disputes.

8. When a case which has been docketed with the Third Division of the National Railroad Adjustment Board is submitted to the Disputes Committee, the party or parties submitting it will so notify the Executive Secretary of the Third Division and request that the case be held in abeyance pending action by the Disputes Committee. When the Disputes Committee has decided such case, the party or parties submitting it will so notify the Third Division, furnishing it a copy of the decision. If the decision disposes of all issues in the case, the Division will issue an award dismissing it. If an issue or issues not arising out of the interpretation or application of the provisions of the national agreements referred to in Section 2 hereof remains unsettled, either party to the dispute may request the Division to restore the case to its working calendar, in the same position with respect to other pending cases as it occupied when set aside to be held in abeyance, and proceed to make an award disposing of the remaining issue or issues.

9. This agreement shall continue until July 1, 1964, and thereafter subject to termination upon ninety days written notice from either party to the other, and in the event such notice is given, this agreement shall terminate without further action on the part of either party.

Signed this 31st day of May 1963, in the City of Chicago, Illinois.

Territorial Committees for the National Railroad Adjustment Board:

EASTERN COMMITTEE FOR THE N.R.A.B.,
By: (Signed) J. J. GAHERIN, *Chairman.*
WESTERN COMMITTEE FOR THE N.R.A.B.,
By: (Signed) E. H. HALLMANN, *Chairman.*
SOUTHEASTERN COMMITTEE FOR THE N.R.A.B.,
By: (Signed) G. N. CERTAIN, *Vice Chairman.*
TERRITORIAL COMMITTEES FOR THE N.R.A.B.,
By: (Signed) J. E. WOLFE, *Chairman.*

Committee representing Labor Organizations Participating in Third Division, NRAB.

(Signed) GEO. M. HARRISON (GRA),
Grand President, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.
(Signed) H. C. CROTTY,
President, Brotherhood of Maintenance of Way Employes.
(Signed) G. E. LEIGHTY,
President, The Order of Railroad Telegraphers.
(Signed) JESSE CLARK,
President, Brotherhood of Railroad Signalmen.

MEMORANDUM OF UNDERSTANDING

This memorandum is supplemental to and a part of the agreement made this 31st day of May, 1963, between the Eastern Committee for the National Railroad Adjustment Board, the Western Committee for the National Railroad Adjustment Board, and the Southeastern Committee for the National Adjustment Board, hereinafter called the "Carriers," and the

Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employes
The Order of Railroad Telegraphers
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen

creating a disputes committee to decide disputes as to interpretation or application of certain national agreement provisions.

Such disputes committee will not have jurisdiction with respect to any dispute involving the Southern Railway System or any of its affiliated lines, the Florida East Coast Railway, or the Tennessee Central Railway.

Signed this 31st day of May, 1963, in the city of Chicago, Illinois.

Territorial Committees for the National Railroad Adjustment Board:

EASTERN COMMITTEE FOR THE N.R.A.B.,
By: (Signed) J. J. GAHERIN, *Chairman.*
WESTERN COMMITTEE FOR THE N.R.A.B.,
By: (Signed) E. H. HALLMANN, *Chairman.*
SOUTHEASTERN COMMITTEE FOR THE N.R.A.B.,
By: (Signed) G. N. CERTAIN, *Vice Chairman.*
TERRITORIAL COMMITTEES FOR THE N.R.A.B.,
By: (Signed) J. E. WOLFE, *Chairman.*
(Signed) GEO. M. HARRISON (GRA),

Committee representing Labor Organizations Participating in Third Division, N.R.A.B.:

Grand President, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.
(Signed) H. C. CROTTY,
President, Brotherhood of Maintenance of Way Employes.
(Signed) G. E. LEIGHTY,
President, The Order of Railroad Telegraphers.
(Signed) JESSE CLARK,
President, Brotherhood of Railroad Signalmen.

MEMORANDUM AGREEMENT

The following procedure is agreed to in submitting disputes to the Disputes Committee established by the Memorandum Agreement dated May 31, 1963, between the parties signatory to this Memorandum Agreement to hear and decide disputes involving interpretation or application of the following provisions of national agreements:

Agreement of December 17, 1941, and all amendments thereto (Vacations).
Agreement of August 21, 1954, Articles II, IV, V, and VI.
Agreement of August 19, 1960, Article III.
Agreement of June 5, 1962.

1. The Disputes Committee shall consider disputes submitted:

(a) Jointly by the president(s) of the organization(s), or his or their representative(s) designated to handle such matters for the organization(s) and the officer(s) designated to handle such matters for the carrier(s).

(b) On behalf of the employe(s), by the president(s) of the organization(s) or his or their representative(s) designated to handle such matters for the organization(s).

(c) On behalf of the carrier(s), by the officer(s) designated to handle such matters for the carrier(s).

2. The party or parties, as specified in Item 1 hereof, invoking the services of the Disputes Committee shall file a complete submission presenting—

(A) In the case of joint submission:

(1) The question at issue.

(2) Joint Statement of Facts.

(3) Position of employe(s) with such substantiating evidence and argument as it is desired to file with the Disputes Committee.

(4) Position of the carrier(s) with such substantiating evidence and argument as it is desired to file with the Disputes Committee.

(5) Twenty-five (25) copies of each joint submission shall be sent to and addressed as follows: Mr. J. F. Griffin, Administrative Secretary, Labor Relations Department, National Railway Labor Conference, Room 482, Union Station Building, Chicago, Illinois 60606.

(6) Twenty-five (25) copies of each joint submission also shall be sent to and addressed as follows:

If involving the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employes: Mr. C. L. Dennis, Grand Presi-

dent, Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employes, 1015 Vine Street, Cincinnati 2, Ohio.

If involving The Order of Railroad Telegraphers: Mr. G. E. Leighty, President, The Order of Railroad Telegraphers, 3860 Lindell Boulevard, St. Louis 8, Missouri.

If involving the Brotherhood of Maintenance of Way Employes: Mr. H. C. Crotty, President, Brotherhood of Maintenance of Way Employes, 12050 Woodward Avenue, Detroit 3, Michigan.

If involving the Brotherhood of Railroad Signalmen: Mr. Jesse Clark, President, Brotherhood of Railroad Signalmen, 2247 Lawrence Avenue, Chicago, Illinois 60625.

(B) If a joint submission is not agreed upon, then disputes may be submitted to the Disputes Committee ex parte, which shall include:

(1) The question at issue.

(2) Ex Parte Statement of Facts.

(3) Position of employe(s) or carrier(s), as case may be, with such substantiating evidence or argument as it is desired to file with the Disputes Committee.

(4) In the case of ex parte submissions originating with the organization(s), the chief executive officer of the organization(s) involved, as named in paragraph 2(A)(6), will send twenty-five (25) copies each of such submissions to the officer of the carriers' organization, as named in paragraph 2(A)(5). Such officer will send copy of the organization's ex parte submission to the management of the railroad involved.

(5) In the case of ex parte submissions originating with the carrier(s), the management of the carrier involved will send fifty (50) copies each of such submissions to the officer of the carrier's organization, as named in paragraph 2(A)(5). Such officer will send twenty-five (25) copies each of such submissions to the chief executive officer of the organization involved, as named in paragraph 2(A)(6).

(6) In the case of ex parte submissions originating with the organizations, the management of the carrier involved will prepare its answering submissions in accordance with paragraphs 2(B)(1), 2(B)(2), and 2(B)(3) hereof, and will send fifty (50) copies each of such answering submissions to the officer of the carriers' organization, as named in paragraph 2(A)(5). Such officer will send twenty-five (25) copies each of such answering submissions to the chief executive officer of the organization involved, as named in paragraph 2(A)(6), with his letter docketing the case with the Disputes Committee pursuant to paragraph 2(C) hereof.

(7) In the case of ex parte submissions originating with the carrier(s), the organization involved will prepare its answering submissions in accordance with paragraphs 2(B)(1), 2(B)(2), and 2(B)(3) hereof, and the chief executive officer of the organization involved, as named in paragraph 2(A)(6) will send twenty-five (25) copies each of such answering submissions to the officer of the carriers' organization, as named in paragraph 2(A)(5).

(C) Upon receipt by the officer of the carriers' organization of copies of the complete submission(s) from both parties, or upon the lapse of ninety (90) days from his transmittal to the carrier involved of an ex parte submission originating with the organizations under paragraph 2(B)(4) or from his transmittal to the chief executive officer of the organization involved of an ex parte submission originating with the carriers under paragraph 2(B)(5), he shall immediately docket the case(s) for consideration by the Disputes Committee and the following distribution of the submission(s) will immediately be made:

One (1) copy to each carrier member of the committee by the officer of the carriers' organization.

One (1) copy to each organization member of the committee by the chief executive officer of the organization involved (see paragraph 2(B)(6)).

Such procedure shall not preclude the acceptance by the Disputes Committee of an answering submission which is timely received subsequent to the docketing of the case involving the ex parte submission which it answers.

Signed this 16th day of September 1963, in the City of Chicago, Illinois.

Territorial Committees for the National Railroad Adjustment Board:

EASTERN COMMITTEE FOR THE N.R.A.B.,
By: (Signed) J. J. GAHERIN, *Chairman.*
WESTERN COMMITTEE FOR THE N.R.A.B.,
By: (Signed) E. H. HALLMANN, *Chairman.*
SOUTHEASTERN COMMITTEE FOR THE N.R.A.B.,
By: (Signed) C. A. McREE, *Chairman.*
TERRITORIAL COMMITTEES FOR THE N.R.A.B.,
By: (Signed) J. E. WOLFE, *Chairman.*

Committee representing Labor Organizations Participating in Third Division, N.R.A.B.:

(Signed) C. L. DENNIS, G.R.A.,
Grand President, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.
(Signed) H. C. CROTTY,
President, Brotherhood of Maintenance of Way Employees.
(Signed) G. E. LEIGHTY,
President, The Order of Railroad Telegraphers.
(Signed) JESSE CLARK,
President, Brotherhood of Railroad Signalmen.

EXHIBIT M

Nature of awards of the 1st division, National Railroad Adjustment Board, 1934 to Apr. 30, 1965

Calendar year	Denied, remanded or dismissed	Sustained, compromised or conditional	Total
1934	6	27	33
1935	237	484	721
1936	[1] 274	[2] 594	868
1937	176	632	808
1938	267	[3] 656	923
1939	362	741	1,103
1940	343	587	930
1941	272	659	931
1942	457	813	1,270
1943	525	817	1,342
1944	504	689	1,193
1945	344	473	817
1946	74	99	173
1947	421	340	761
1948	389	293	682
1949	388	236	624
1950	641	336	977
1951	649	256	905
1952	681	213	894
1953	459	138	597
1954	279	66	345
1955	361	72	433
1956	551	75	626
1957	525	87	612
1958	376	81	457
1959	280	86	366
1960	311	55	366
1961	255	67	322
1962	113	50	163
1963	115	44	159
1964	80	48	[4] 128
1965 [5]	73	26	99
Grand total	[1] 10,788	[2 3] 9,840	[1 2 3 4] 20,628

[1] Includes 2 letter awards not assigned award numbers.
[2] Includes 5 letter awards not assigned award numbers.
[3] Includes 6 letter awards not assigned award numbers.
[4] Includes 2 awards on 2 different dockets.
[5] Covers 4 months, Jan. 1, 1965, through Apr. 30, 1965.

EXHIBIT N

MAY 19, 1949.

MEMORANDUM

The chief executive officers of the five operating organizations and the three regional carriers' committees for the National Railroad Adjustment Board are agreed on the following procedure:

Two supplemental boards of four men each will be set up under the provisions of Section 3 First (w) of the Railway Labor Act with authority to handle cases now on the docket of the First Division of the National Railroad Adjustment Board, assigned to them by such First Division, and such additional cases as may be assigned to them by such Division, as hereafter provided. One board shall consist of one representative each appointed by the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen, and two representatives appointed by the Carriers. The other board shall consist of one representative each appointed by the Order of Railway Conductors and Brotherhood of Railroad Trainmen, and two representatives appointed by the Carriers.

It is understood that the members of such boards may be changed from time to time. Representatives from any railroad involved in cases assigned to such boards may be appointed as board members to handle cases coming from that railroad and members may be changed from time to time as the cases involve different railroads.

Initially, in assigning cases to such supplemental boards, the First Division shall assign cases which have not been certified for appointment of a referee involving any railroad system where ten or more cases are on the docket as of the date of the appointment of such supplemental boards, involving emplyoyees represented by either or both of the Organizations on each board respectively. Example: If the "A" railroad has seven cases involving the B of L E and four cases involving the B of L F & E they will be assigned to the supplemental board on which representatives of those two organizations serve. The same example is applicable to the O R C and B of R T.

Thereafter, from time to time the First Division shall assign to such supplemental boards cases involving a railroad system whenever ten or more cases are docketed, in the same manner as described in the preceding paragraph.

Cases where the interest of an organization not represented on such supplemental board is asserted by either party or by a member of the First Division, shall be retained by the First Division and shall not be assigned to such supplemental board.

It is agreed that such supplemental boards shall be established for a period of one year, and thereafter subject to termination upon request of the chief executive officers of the five operating organizations or the three regional carrier committees upon ninety days' notice.

A. JOHNSTON,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.

D. B. ROBERTSON,
International President, Brotherhood of Locomotive Firemen and Enginemen.

H. W. FRASER (ROH),
President, Order of Railway Conductors.

——— MACKENZIE,
Assistant President, Brotherhood of Railroad Trainmen.

H. J. GLOVER,
President, Switchmen's Union of North America.

H. A. ENOCHS,
Chairman, Eastern Committee for the National Railroad Adjustment Board.

D. P. LOOMIS,
Chairman, Western Committee for the National Railroad Adjustment Board.

———— ————,
Chairman, Southeastern Committee for the National Railroad Adjustment Board.

Witness:

FRANCIS A. ————,
Chairman, National Mediation Board.

EXHIBIT O

MAY 20, 1949.

PRESS RELEASE

Two far-reaching agreements were signed in Chicago today between the chief executives of the five standard organizations representing practically all train and engine service employees and representatives of all the class I carriers in the country. One agreement provides for the creation of two boards to supplement the First Division of the National Railroad Adjustment Board, and the second agreement provides for changes in procedure before that Board. By these two agreements, it is confidently expected that the tremendous backlog of grievance cases presently pending will be dissipated. This backlog of grievances has been a constant source of friction in the railroad industry for more than 10 years, and has been the cause of frequent threats of interruption to railroad service.

The National Mediation Board commends the parties for this major contribution to amicable labor relations, because it proves once again that there is no substitute for true collective bargaining.

EXHIBIT P

Number of awards of the regular and supplemental boards, National Railroad Adjustment Board, 1949 to Apr. 30, 1965, First Division

Year	Regular board	Supplemental board, engineers-firemen	Supplemental board, conductors-trainmen	Total supplemental boards, E. & F. and C. & T.	Total
1949	461	1	10	11	472
1950	186	185	328	513	699
1951	298	195	248	443	741
1952	359	137	268	405	764
1953	332	61	58	119	451
1965 [1]	81	18			99
Total	1,717	597	912	1,491	3,226

[1] Covers 4 months, Jan. 1, 1965, through Apr. 30, 1965.

NOTE.—Supplemental boards began operation in October 1949, and discontinued operation in March 1953. The firemen's supplemental board began operation in March 1965.

EXHIBIT Q

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN

ORDER OF RAILWAY CONDUCTORS

BROTHERHOOD OF RAILROAD TRAINMEN

SWITCHMEN'S UNION OF NORTH AMERICA

DECEMBER 22, 1952.

Messrs. L. W. Horning, chairman, Eastern Committee for the National Railroad Adjustment Board; D. P. Loomis, chairman, Western Committee for the National Railroad Adjustment Board; W. S. Baker, chairman, Southeastern Committee for the National Railroad Adjustment Board.

DEAR SIRS: On May 19, 1949, representatives of the Eastern, Western and Southeastern Carriers' Committee for the National Railroad Adjustment Board and representatives of the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen & Enginemen, Order of Railway Conductors, Brotherhood

of Railroad Trainmen and Switchmen's Union of North America entered into an agreement providing, in part, that:

"Two supplemental boards of four men each will be set up under the provisions of Section 3 First (w) of the Railway Labor Act with authority to handle cases now on the docket of the First Division of the National Railroad Adjustment Board, assigned to them by such Division, as hereafter provided * * *."

Please accept this as notice of our desire to terminate this agreement in its entirety in accordance with the terms of the last paragraph thereof.

Very truly yours,

J. P. PHIELAS,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.
D. B. ROBERTSON,
President, Brotherhood of Locomotive Firemen & Enginemen.
R. O. HUGHES,
President, Order of Railway Conductors.
W. D. KENNEDY,
President, Brotherhood of Railroad Trainmen.
H. J. GIBSON,
President, Switchmen's Union of North America.

cc: Chairman, National Mediation Board.

EXHIBIT R

CHICAGO, ILL., *March 4, 1953.*

HON. FRANCIS A. O'NEILL,
Chairman, National Mediation Board,
Washington, D.C.

DEAR SIR: Referring to the supplemental boards assisting the First Division of the National Railroad Adjustment Board, which supplemental boards were set up under agreement dated May 19, 1949, between the Eastern, Western and Southeastern Carriers' Committees for the National Railroad Adjustment Board and the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen & Enginemen, Order of Railway Conductors, Brotherhood of Railroad Trainmen and the Switchmen's Union of North America:

As you know, the five brotherhoods served notice on December 22, 1952, in accordance with the last paragraph of the agreement referred to above, of their desire to terminate the agreement in its entirety which we understand to mean that the supplemental boards will go out of existence on March 22, 1953.

Various rumors have reached us that the main objection which the brotherhoods have to the supplemental board is the setup for a revolving carrier member on each supplemental board and that if the carriers were willing to change that arrangement and place two permanent members on each supplemental board that the difficulty might be adjusted. We discussed this matter with you and you undertook to ascertain whether there was any foundation for such rumors. On March 2 you advised Mr. Loomis by telephone that the brotherhoods were unwilling to continue the supplemental boards under any circumstances.

This whole matter has been considered by the Eastern, Western and Southeastern Carriers' Committees for the National Railroad Adjustment Board and we are authorized to advice you that the carriers are willing to change the arrangement for a revolving carrier member and to put two permanent carrier members on each supplemental board. We are also authorized to advise you that the carriers are willing to consider any other reasonable arrangement which would continue the supplemental boards in force and provide for the more prompt and expeditious handling of contract and grievance disputes.

For the calendar year 1952 the First Division and the supplemental boards rendered 894 awards, 497 of which were made by the First Division and 397 by the supplemental boards. The result of abolition of the supplemental boards can only mean materially cutting the productivity on First Division awards.

The Railway Labor Act of 1926 provided for the setting up of boards of adjustment by agreement and various regional boards were set up. The objection raised to these boards, however, was that there was no way to break a deadlock when the carrier and employee members failed to agree on a decision.

The 1934 amendments took care of this by creating the National Railroad Adjustment Board and by providing that when the carrier and employee members could not agree on a decision, a referee would be either selected by the parties or appointed by the National Mediation Board. It should be noted that these amendments were sponsored by the employee organizations and the act was passed and the National Railroad Adjustment Board was created. The act, however, still left open the opportunity to agree on regional or system boards.

In presenting the 1934 amendments to the Senate Committee on Interstate Commerce on April 11, 1934, Mr. George Harrison, speaking for the 21 standard railway labor organizations including the five operating organizations, discussed the organizations' reasoning for desiring the creation of the National Railroad Adjustment Board. He pointed out that the proposed amendments left it open to the parties to agree on system or regional boards or any other satisfactory method of disposing of disputes but that if they did not enter into such agreements the machinery of the National Board would have to be used.

At pages 34 and 35 of the report of hearings before the Senate Committee on Interstate Commerce, Mr. Harrison had this to say:

"Mr. HARRISON. That is right. In other words, we want to set up something that will be available, and hope that the parties will get together and establish something in its place.

"We have had experience for 14 years under these boards, and we hope that the committee will give us this national board, because if it is not approved and put into the law, we will be unable to work out satisfactory machinery by mutual agreement. The only reason we will be able to agree on other machinery is because we have this board set up by law that we can go to if we can't get an agreement on something else. It is a very troublesome problem and I just want to make this observation: These railway labor organizations have always opposed compulsory determination of their controversies. We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and which we have the right and privilege of entering into and have something to say about their terms, we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make.

"I just want to tie this tail on to that kite, if I may express it that way, that if we are going to get a hodgepodge arrangement by law rather than what is suggested by this bill, then we don't want to give up that right, because we only give up the right because we feel that we will get a measure of justice by this machinery that we suggest here."

Certainly it was the understanding and clear intent of Congress that the procedures set up in the 1934 act should be followed in the adjustment of grievance and contract disputes.

At the meetings between carrier and organization representatives conducted in Washington under the auspices of the National Mediation Board on November 19 and December 10, 1952, there was considerable discussion of the First Division situation and possible methods of disposing of a large number of grievance and contract disputes involving operating employees. Carrier representatives suggested that the quickest and most expeditious way to dispose of these disputes and provide satisfactory handling was to agree on special or system boards of adjustment on railroads which have unsettled contract and grievance disputes. However, at least some of the organization representatives stated that they had no authority to agree on such a method of disposing of these disputes.

Therefore, the result of the notice served by the brotherhoods on December 22, 1952, is to materially reduce the ability of the First Division of the National Railroad Adjustment Board to expeditiously handle these disputes without creating any alternative method for their disposition. While the organization representatives stated that they would recommend special or system boards, reports reaching us from a number of properties indicate that the organizations have declined to adopt that method on such properties for disposing of such disputes.

We wish to point out that contracts in many outside industries include a grievance procedure with provision for an impartial arbitrator or umpire to

decide disputes under the contract. Furthermore, the Dominion of Canada has by national act outlawed strikes over contract disputes and has provided by law that all such disputes must be disposed of without stoppage of work. As previously pointed out, that was also the intent of the 1934 amendments to the Railway Labor Act.

In our opinion there is never any excuse for a strike over a contract or grievance dispute. We do not believe that either side has unlimited right to insist that its interpretation of a contract is the correct one and to seek to enforce it by the use of economic strength. It is entirely in keeping with the American system that when the parties cannot agree on the proper disposition of such disputes, an umpire should decide them.

It is our considered view that in the absence of the adoption of some alternative method for the disposition of contract and grievance disputes, the Supplemental Adjustment Boards should be continued and, as stated above, we are willing to make any reasonable arrangement which will permit their continuance. If there are any additional efforts which the National Mediation Board can make in this connection, we believe it is entirely proper that the Board do so.

Yours very truly,

(Signed) H. E. JONES,
Chairman, Eastern Committee for the National Railroad Adjustment Board.
(Signed) D. P. LOOMIS,
Chairman, Western Committee for the National Railroad Adjustment Board.
(Signed) W. S. BAKER,
Chairman, Southeastern Committee for the National Railroad Adjustment Board.

Copy to: Mr. J. P. Shields, grand chief engineer, Brotherhood of Locomotive Engineers, Cleveland, Ohio; Mr. D. B. Robertson, president, Brotherhood of Locomotive Firemen & Enginemen, Cleveland, Ohio; Mr. R. O. Hughes, president, Order of Railway Conductors, Cedar Rapids, Iowa; Mr. W. P. Kennedy, president, Brotherhood of Railroad Trainmen, Cleveland, Ohio; Mr. A. J. Glover, International President, Switchmen's Union of North America, Buffalo, N.Y.

EXHIBIT S

Statement, by territories and organizations, showing the number of cases pending before the first division, National Railroad Adjustment Board, as of Apr. 30, 1965

	E	F	C	T	SUNA	C-T	E-F	EFCT	RIU	F-T	E-T	F-C-T	E-F-C	F-C	USWA	IARE	INDV	Total
Eastern	36	331	93	441	12		11	1	4	7					3		5	944
Southeast	193	366	105	673	39	11	3	1		4		3		2	1	3	47	1,452
Western	177	522	175	397	365	5	51	2		6	1	1	1	1			18	1,722
Total	406	1,219	373	1,511	416	16	65	4	4	17	1	5	1	3	4	3	70	4,118

STATEMENT OF W. S. MACGILL, CHAIRMAN, SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEE AND CHAIRMAN, SOUTHEASTERN COMMITTEE FOR THE NATIONAL RAILROAD ADJUSTMENT BOARD

My name is W. S. Macgill; I am chairman of the Southeastern Carriers' Conference Committee and the Southeastern Committee for the National Railroad Adjustment Board, with headquarters in Chicago, Ill. My residence is in Fairfax County, Va.

During the past 39 years, I have been employed in the railroad industry as a lawyer and labor adviser-negotiator. During this period, I have observed the operations of the National Railroad Adjustment Board from the time it was created by the 1934 amendments to the Railway Labor Act, over 30 years ago (July 21, 1934–64). I have prepared submissions of disputes for decision by the various divisions of the Board; have appeared personally before the divisions; and have, since 1956, served on various committees representing the carriers in administering the operations and activities of the Board.

During the period 1960–63, I served as Chairman of the Eastern Committee for the National Railroad Adjustment Board, and actively participated in the planning and execution of the program now in operation on the third division to eliminate the backlog of pending disputes.

During the year April 1963–64, I served as chief administrative officer of the Adjustment Board for the carriers. This assignment had for its chief purpose the formulation of ways and means to improve the efficiency and economy of operations of all four divisions of the Board. During that year, I gave a great deal of time and study to the problems of the Board—particularly the backlogs of the First and Third Divisions.

As has been demonstrated by other witnesses on behalf of the carriers, the bills pending before the committee would not, in our judgment, operate to correct or even improve the backlog problem. In fact, they probably would aggravate the situation. However, it is not my purpose in this statement to deal with the backlog problem as such, nor to discuss possible solutions to it, since this has been done by others; I wish to bring to the attention of the committee certain of the constitutional and other legal objections to the pending bills as drafted.

H.R. 701 would amend the Railway Labor Act to require a carrier to "join in an agreement" establishing a special board of adjustment with 30 days after the union makes a written request for a special board. The jurisdiction of the board would be defined by the agreement establishing the board, and the board is to be composed of one labor member, one carrier member, and a neutral member selected by the parties or appointed by the National Mediation Board in the event of a deadlock. The award of the board is to be final and binding and enforcible in the U.S. district courts. This latter provision in my opinion adds nothing to section 3, second, of the Railway Labor Act, inasmuch as the Supreme Court has recently held that the awards of boards voluntarily established under the provisions of this section are now enforcible in the Federal courts. See *Machinists* v. *Central Airlines, Inc.*, 372 U.S. 682 (1963).

H.R. 701 differs from H.R. 706 only insofar as the latter bill would allow either the carrier or the union to request a special board.

These two bills have at least two undesirable features. First, there appears to be no way that the party requesting a special board could judicially enforce the provisions of the bills which require the other party to enter into an agreement establishing such a board. If the parties cannot reach an agreement on the jurisdiction of the board or on the other provisions which would normally go into an agreement to arbitrate, a court could not order one side to accede to the desires of the other, nor could it dictate the terms of the contract creating the board. To do so would be to go beyond the provisions of the bills.

The gravity of the problem which would confront the railroad industry immediately upon the passage of such an amendment becomes even more apparent when it is realized that in this industry the employees are represented by some 25 unions national in scope. It is not unlikely that if such a bill became law a single railroad, no matter how small, would face the necessity of attempting to negotiate separate special board agreements with not one or two but many unions. It seems obvious that a multiplicity of boards, even assuming appropriate agreements could be reached, on a single railroad would produce chaotic

conditions, excessive costs, and further complicate the grievance handling processes. This situation on a single railroad, of course, would be multiplied by the number of railroads comprising the industry, inevitably leading to confusion, conflicting decisions, nonuniformity of handling, and a breakdown of the body of principles and precedents which have been developed in this industry under existing grievance machinery.

Secondly, since there appears to be no means to enforce the requirement that on unilateral demand the parties will "enter into an agreement" to establish a special board, it is conceivable that a union might engage in a strike or other form of economic activity at the end of 30 days to coerce the carrier into "agreeing" to the type of special board desired by the union. This possibility is compounded by the large number of unions holding representation rights, each of which would have its own private interests to pursue.

Section 3 of the Railway Labor Act was designed to prevent interruptions to commerce resulting from disputes over contract interpretations or grievances, and the courts have applied this section so that unions cannot strike over these disputes. Once the dispute is submitted to the Adjustment Board, a strike over the dispute is unlawful, and the Federal courts will issue an injunction to protect the jurisdiction of the Adjustment Board. (*Brotherhood of Railroad Trainmen* v. *Chicago R. & I.R. Co.*, 353 U.S. 30 (1957)). Once the Adjustment Board issues an award, the union cannot lawfully strike to enforce or vary the terms of the award. *Brotherhood of Locomotive Engineers* v. *Louisville & Nashville R. Co.* (373 U.S. 33 (1963)). The reasoning which was applied in *Chicago River* and *Louisville & Nashville* would also prevent a strike over a grievance after it was submitted to a special adjustment board. However, if H.R. 701 or 706 were passed and the unions asserted the right to strike to force a reluctant carrier into "agreeing" to the unions' demands on the creation and/or jurisdictional scope of a special board, more litigation and uncertainty would undoubtedly result under this new paragraph of section 3 of the act. Neither the public interest in uninterrupted railroad transportation, nor the interest of railroad employees and the railroads themselves in prompt determination of disputes as to interpretation and application of agreements, would be protected.

Since the act now allows the parties to create special boards when there is a voluntary agreement to do so, the proposed amendments seem to add nothing constructive, but do raise the possibility of coercive action to force an agreement to create a special board.

H.R. 704 would amend section 3, first (m), of the Railway Labor Act by striking that portion of the act which exempts money awards from the final and binding provisions of the act. The amended section would read:

"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."

The final and binding provision in the present act cannot be read alone, but must be read in conjunction with section 3, first (p), which provides:

"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 prima facie evidence of the facts therein stated, 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."

The courts have held that the "final and binding" status of an award cannot be taken literally since section 3, first (p), provides that the award can be enforced only through a court proceeding in which the award is merely prima facie evidence of the facts therein stated. (*Washington Terminal Co.* v. *Boswell* (C.A.D.C., 1941) 124 F. 2d 235, affirmed by equally divided court, 319 U.S. 732; *Thomas* v. *New York, Chicago & St. Louis R. Co.*, (C.A. 6, 1950) 185 F. 2d 614; *Brotherhood of Railway Clerks* v. *Atlantic Coast Line R.R.* (C.A. 4, 1958) 253 F. 2d 753; *Dahlberg* v. *Pittsburgh & L.E.R. Co.* (C.A. 3, 1943) 138 F. 2d 121; *Brotherhood of Railroad Trainmen* v. *Louisville and Nashville R. Co.* decided by the Fifth Circuit Court of Appeals, July 9, 1964, 334 F. 2d 79 (1964), cert. denied 13 Law. Ed. 2d 345.)

In the *L. & N.* case, the enforcement of a Board award was involved. Davis, a member of the trainmen's organization, was discharged for his part in a rear end collision. He processed his grievance to the first division of the Adjustment Board, which, with a referee participating, ordered him reinstated with back pay. The railroad refused to comply, and enforcement was sought under section 3, first (p), of the Railway Labor Act. The Brotherhood filed a motion for summary judgment, in part seeking immediate enforcement of that part of the award ordering Davis' reinstatement, but this was denied. The district court ordered a trial de novo on the merits of the award and a jury found for the railroad on the issue of whether the carrier had been justified in discharging Davis for cause. In affirming, the appeals court said in part:

"Appellants first specify as error the trial court's refusal to grant partial summary judgment enforcing reinstatement without review on the merits by trial de novo. They contend that such a review of nonmoney awards is barred by 45 U.S.C.A. 153(m): '[T]he awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award.' A similar contention has recently been rejected by this court in *Jones* v. *Central of Ga. Ry.* (No. 20948, 5th Cir., May 6, 1964), where a summary judgment denying a petition to enforce an NRAB award of reinstatement and back pay was affirmed. The court there noted that long line of cases which have consistently held that 45 U.S.C.A. 153(p), conferring jurisdiction on the courts to enforce NRAB awards, gives the district court the power to conduct a de novo review of nonmoney awards of the NRAB. We shall therefore only set out the reasoning used to arrive at this result rather than attempting to examine all of the cases in the field.

"The enforcement provision, subsection (p), makes no distinction between money awards and nonmoney awards. It refers generally to 'an order' of the Board with which the carrier refuses to comply. If any order of the Board is to be enforced in a district court, the procedure set forth in subsection (p) must be followed. The petition must set forth the causes for which relief is claimed as well as the order of the Board; the suit 'shall proceed in all respects as other civil suits'; the Board's order is only to be 'prima facie evidence of the facts therein stated'; and, finally, the court may make the appropriate order to enforce or set aside the order. From these it is apparent that a trial de novo on the merits is contemplated. (See *Thomas* v. *New York, C. & St. L. Ry.*, 185 F. 2d 614, 616 (6th Cir. 1950); *Dahlberg* v. *Pittsburgh & L.E. R.R.*, 138 F. 2d 121, 122 (3d Cir. 1943).) Although the award of the NRAB is to have some probative weight it is not to be legally conclusive even though it is a nonmoney award. (See *Washington Terminal Co.* v. *Boswell*, 124 F. 2d 235, 243 (D.C. Cir. 1941), aff'd by an equally divided court, 319 U.S. 732 (1943).) The provision in section 153(m) that a nonmoney award is to be 'final and binding' obviously has some limits—an award beyond the statutory authority of the Board would not be binding and no award can be enforced without the aid of the courts, see *Dahlberg* v. *Pittsburgh & L.E. R.R.*, *supra* at 122; and construing subsection (m) in the context of the entire provision, including subsection (p), 'final and binding' may be taken to mean that it is final so long as there is no effort to enforce the award under subsection (p) (see *Cook* v. *Des Moines Union Ry.*, 16 F. Supp. 810, 813 (S.D. Iowa 1936))."

A copy of the full opinion in this case is attached as appendix A.

Therefore, the wording of the amendment proposed in H.R. 704 does not seem to change the act as it is now applied. However, it must be assumed that the proponents of this amendment intended that the proposed change would preclude a railroad from presenting a case on the merits of a claim in a suit brought by an employee to enforce an Adjustment Board award. If the wording of H.R. 704 were changed to accomplish the apparently intended result, the resulting statute could work a serious injustice upon the carriers.

The *L. & N.* case from which I just quoted provides a good example of the type of injustice to which I refer. There the Adjustment Board entered an award requiring reinstatement of an employee and granting a substantial sum of money as back wages. When the case was taken to court the railroad was vindicated by a jury which held that discharge of the employee was justified on the merits, and, accordingly, the money award was nullified. Without court review this railroad would have been compelled to comply with an erroneous and unjustified Adjustment Board decision.

Another example is the recent case of *Brotherhood of Railroad Trainmen* v. *Denver & Rio Grande Railroad* (338 F. 2d 407 (C.A. 10, 1964) cert. denied April 26, 1965). In that case the Adjustment Board held that the carrier had breached the collective bargaining agreement by changing a straightaway run between terminals to a turnaround run, and awarded a full day's pay to each of the claimants even though the claimants had received full pay for the days in question, so that, in effect, the carrier was ordered to pay 2 days' pay for 1 day's work as a form of penalty. The court upheld the Board on the agreement violation but struck down that part of the award which called for money penalties, granting only nominal damages because the claimants had incurred no actual loss. In the absence of the right to resort to the courts the railroad would have been required to make the unjustified penalty payments awarded by the Adjustment Board referee.

In addition to the injustices that would flow from a deprivation of access to the courts, such a provision in the law would be subject to challenge on constitutional grounds. In *Washington Terminal* v. *Boswell*, supra, the circuit court considered the question of whether the Adjustment Board procedure deprived a carrier of due process. The court noted that it appeared that the Board's procedure, viewed alone, did not comply with the requirements of due process, but the court went on to hold at page 244:

"* * * These things would be important, if the Board's decisions were final in the legal sense and for purposes of enforcement, as to either facts or law. But, as has been shown, they have no such quality. Though the effects of an award favorable to an employee are substantial, they do not conclude the employer's rights. The Board cannot enforce its awards. That is left for the courts to do. It can be done only in a suit de novo. In the suit the cause of action is upon the award, to secure its enforcement. But the parties are not limited by its provisions in the trial. The employee must set forth 'the causes for which he claims relief' and the Board's order (45 U.S.C.A. sec. 153, first (p)). The suit must 'proceed in all respects as other suits,' except that the order and findings 'shall be prima facie evidence of the facts therein stated.' (Ibid.) The carrier is limited in no way as to its defenses or the evidence it may wish to present. Its day in court in the enforcement suit is a full one. That is hardly disputed. The short answer, therefore, to the argument that the administrative proceeding is wanting in due process is that, if so, this is entirely immaterial. Any failure in this respect is cured by the full and complete opportunity which the carrier is given in the enforcement suit to make its defense under all procedural and substantive guarantees of the Constitution."

Also pertinent to the constitutional question is the following language by the court in the case of *Dahlberg* v. *Pittsburgh & Lake Erie Railroad* (138 F. 2d 121 (C.A. 3, 1943)):

"The general plan of the statute clearly discloses an intention to use the words in the sense that the award is the definitive act of a mediative agency, binding until and unless it is set aside in the manner prescribed, and that it was intended that the court should exercise broader powers than merely directing coercive process to issue if satisfied that the proceeding was authorized by law.

"* * * If the act should be interpreted as precluding consideration of the merits by the court, serious doubts as to its constitutionality would arise. * * * 'There can be no valid delegation of governmental power to nongovernmental agencies. The Adjustment Board, consisting of bipartisan groups paid by and set up to represent the employees and carriers respectively is not a governmental agency.'"

If the proposed amendment deprived the carrier of a trial de novo at the district court level, the procedural requirements now absent at the Board level would never be provided. Since the amendment is therefore subject to challenge on constitutional grounds if it were to accomplish the result intended by the proponents, and since in its present form the amendment would lead to injustice and confusion, it should be rejected.

As a matter of interest, in the 30 years since the Board was created, the experience has been that only a relatively small number of awards have been the subject of enforcement proceedings brought pursuant to section 3, first (p) of the act. There has simply been no abuse by the carriers in this regard, and there has been no burden on the courts.

To illustrate: I have made an inspection of the reported cases which numbered only 40. In over half of the 40 cases, the court held that the Board award should not be enforced. While it is true there were probably a number of other enforcement suits which never reached the state of a reported opinion, this sample certainly illustrates that the provisions of section 3, first (p), are invoked only in rare instances, and in many of these instances the result of the reported cases illustrates that the carriers were justified in their refusal to comply. The important point is that there simply is no abuse that requires an amendment to enforcement procedures of the present Railway Labor Act.

For the reasons very briefly summarized in this statement, we believe that the bills before the committee are legally and constitutionally objectionable, and, moreover, would create problems rather than solve them.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

NO. 20715

BROTHERHOOD OF RAILROAD TRAINMEN AND A. W. DAVIS, APPELLANTS, VERSUS LOUISVILLE AND NASHVILLE RAILROAD COMPANY, APPELLEE

Appeal from the United States District Court for the Northern District of Alabama

(July 9, 1964)

Before TUTTLE, Chief Judge, WISDOM, Circuit Judge, and McRAE, District Judge.

TUTTLE, Chief Judge: This case arises from a petition to enforce an award of the National Railroad Adjustment Board requiring the Louisville and Nashville Railroad to reinstate and pay back to petitioner-appellant A. W. Davis, a member of the Brotherhood of Railroad Trainmen. The Railroad discharged Davis for his part in a rear-end collision of two L & N freight trains within the yard limits of Peterman, Alabama, on December 11, 1958. Davis was the conductor stationed in the caboose of a half-mile long, southbound freight train. The Railroad charged that he failed to keep a proper watch and to place a flagman as required on the rear of the train during a back-up operation; the back-up ended when his train collided with another southbound freight. The engineer of the other freight was given a 60-day record suspension for his part in the collision.

Davis processed a grievance of his discharge through appropriate steps and the matter was submitted to the Board for its decision. The referee found that Davis was to some degree at fault but decided that his neglect was akin to that of the engineer of the other train and hence that the harsher discipline of Davis was discriminatory. Davis was ordered reinstated with pay for lost time and with all rights unimpaired but with a record suspension of sixty days. The Railroad refused to comply and enforcement was sought under 45 U.S.C.A. § 153(p). The Brotherhood filed a motion for summary judgment in part seeking immediate enforcement of that portion of the award ordering Davis's reinstatement, but this was denied. The district court ordered a trial *de novo*, in which Davis's service record was admitted, on the merits of the award and a jury found for the Railroad on the issue whether Davis had been discharged for cause.

Appellants first specify as error the trial court's refusal to grant partial summary judgment enforcing reinstatement without review on the merits by trial *de novo*. They contend that such a review of non-money awards is barred by 45 U.S.C.A. § 153(m):—"[T]he awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award." A similar contention has recently been rejected by this Court in *Jones* v. *Central of Ga. Ry.*, No. 20948, 5th Cir., May 6, 1964, where a summary judgment denying a petition to enforce an NRAB award of reinstatement and back pay was affirmed. The Court there noted the long line of cases which have consistently held that

45 U.S.C.A. § 153(p),[1] confering jurisdiction on the courts to enforce NRAB awards, gives the district court the power to conduct a *de novo* review of nonmoney awards of the NRAB. We shall therefore only set out the reasoning used to arrive at this result rather than attempting to examine all of the cases in the field.

The enforcement provisions, subsection (p), makes no distinction between money awards and nonmoney awards. It refers generally to "an order" of the Board with which the carrier refuses to comply. If any order of the Board is to be enforced in a district court, the procedure set forth in subsection (p) must be followed. The petition must set forth the causes for which relief is claimed as well as the order of the Board; the suit "shall proceed in all respects as other civil suits;" the Board's order is only to be "prima facie evidence of the facts therein stated;" and, finally, the court may make the appropriate order to enforce or set aside the order. From these it is apparent that a trial *de novo* on the merits is contemplated. See *Thomas* v. *New York, C & St.L. Ry.*, 185 F.2d 614, 616 (6th Cir. 1950); *Dahlberg* v. *Pittsburgh & L.E. R.R.*, 138 F.2d 121, 122 (3d Cir. 1943). Although the award of the NRAB is to have some prohibitive weight it is not to be legally conclusive even though it is a nonmoney award. See *Washington Terminal Co.* v. *Boswell*, 124 F.2d 235, 243 (D.C. Cir. 1941), *aff'd by an equally divided court*, 319 U.S. 732 (1943). The provision in section 153(m) that a nonmoney award is to be "final and binding" obviously has some limits—an award beyond the statutory authority of the Board would not be binding and no award can be enforced without the aid of the courts—see *Dahlberg* v. *Pittsburgh & L.E. R.R.*, *supra* at 122; and construing subsection (m) in the context of the entire provision, including subsection (p), "final and binding" may be taken to mean that it is final so long as there is no effort to enforce the award under subsection (p), see *Cook* v. *Des Moines Union Ry.*, 16 F. Supp. 810, 813 (S.D. Iowa 1936).

"The reason for the choice of the words 'final and binding' will appear from the history of legislation providing for mediation of railway labor disputes. Under both the Act of May 20, 1926, 45 U.S.C. § 151 et seq. and the Transportation Act of 1920, 41 Stat. 456, as well as the system of labor mediation which was created during the first world war when the railroads were under federal control, the boards had advisory powers only. See Pennsylvania R. Co. v. United States Railroad Labor Board, 261 U.S. 72, 43 S.Ct. 278, 67 L.Ed. 536. Under the Act of 1926 their awards could be given some practical effect, but only by stipulation. These provisions were not entirely successful and it is plain that the words in question adopted by the framers of the Act of 1934 make the decisions of the Board more efficacious than mere private advice. In this, however, there cannot be found an intention to invest them with the force of unappealable judicial decisions."—*Dahlberg* v. *Pittsburgh & LE. RR.*, *supra* at 123, *quoted with approval in Brotherhood of Ry. & S.S. Clerks* v. *Atlantic Coast Line R.R.*, 253 F.2d 753, 757 (4th Cir. 1958).

Appellants nevertheless argue that this widely approved construction is incorrect in light of certain language in *Brotherhood of Locomotive Eng'rs.* v. *Louisville & N.R.R.*, 373 U.S. 33 (1963). The Supreme Court there held that where a carrier reinstated an employee in accord with an NRAB award but insisted, in complying with the back pay order, upon deducting amounts the employee earned from other employers, the union could be enjoined from striking to enforce its interpretation of the Board's award. In the course of the opinion the Court said:

"We do not deal here with nonmoney awards, which are made 'final and binding' by § 3 First (m). The only portion of the award which presently remains

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[1] "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 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 prima facie evidence of the facts therein stated * * *. 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."

In addition to the advantages of being able to select the venue for the suit and of having the weight of prima facie evidence given the Board's award, the petitioner is allowed by the section a reasonable attorney's fee if he prevails and access to the courts without liability for any court costs unless they accrue upon his appeal.

unsettled is the dispute concerning the computation of Humphries' 'time lost' award, an issue wholly separable from the merits of the wrongful discharge issue. This, then, is clearly a controversy concerning a 'money award,' as to which decisions of the Adjustment Board are not final and binding. * * *

"* * * Congress has, in effect, decreed a two-step grievance procedure for money awards, with the first step, the Adjustment Board order and findings, serving as the foundation for the second. Money awards against carriers cannot be made final by any other means."

We would hesitate to overrule such a well-established precedent on the basis of dictum concerning an issue with whch the Court expressly stated it did not deal; it certainly is not a clear mandate for a change. Moreover, we cannot agree that the language used compels the conclusion, as appellants contend, that the Supreme Court intends that a nonmoney award should be enforced without *de novo* review on the merits. The language in the above quoted passage merely paraphrases the statute; the Court reiterates that awards are final and binding except insofar as they contain a money award, as section 153(m) provides. The Court then refers to section 153(p) to find the mechanism for making a money award final. The fact that nonmoney awards are made final by a Board order whereas money awards are not, has not been questioned; this, however, does not touch upon the procedure for enforcement of the awards which the Court of Appeals authorities uniformly recognize must be a trial *de novo* on the merits for both types of awards. That the Supreme Court in the *Brotherhood of Locomotive Engineers* case did not intend to overturn these settled precedents may at least be inferred from the Court's two citations, 373 U.S. at 39, 41, with apparent approval of *Washington Terminal Co.* v. *Boswell. supra*, which is the landmark case for *de novo* review. See *Jones* v. *Central of Ga. Ry., supra.* We recognize, of course, that two dissenting Justices drew the opposing inference from the Court's opinion. See 373 U.S. at 43 (Goldberg, J., dissenting).

To appellants' further argument that *de novo* review of nonmoney awards thwarts the policy of according finality to settlement by arbitration of labor disputes as expressed in the Steelworkers Trilogy, see, *e.g., United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960), we state as did the Fourth Circuit in *Brotherhood of Ry. & S.S. Clerks* v. *Atlantic Coast Line R.R., supra* at 757–58:

"If it had been intended * * * That the orders of the Board rendered pursuant to 45 U.S.C.A. § 153 should have the effect of awards of arbitrators, some such provisions as are contained in 45 U.S.C.A. §§ 158 and 159 which relate to arbitration under 45 U.S.C.A. § 157, would have been provided for their enforcement. The fact that an entirely different provision was made for the enforcement of Board orders under section 153 from that made for enforcement of arbitration awards entered under the existing statute relating to arbitration is a matter which cannot be ignored and which shows clearly that Congress did not intend Board orders to have the effect of arbitration awards."

Appellants also specify as error the admission of Davis's service record in evidence before the jury. It is their position that the service record was not used in the Railroad's investigation and hence its admission at the trial was in violation of the collective bargaining agreement.[2] They urge that this record, which showed Davis had been given a total of 195 days of record suspensions for twelve infractions over an eighteen-year period, prejudiced Davis in the eyes of the jury by showing he had been disciplined in the past.

At the outset we are puzzled by appellants' objection to the admission of the service record since attorney for appellants, before the hearing in the court below moved for production of the service records of Davis and the engineer of the other train, swearing that they were pertinent to the issues in the case. Additionally, the pretrial order states that all parties agreed that the issue to be decided was whether there was just cause for discharging Davis on the basis of the relative degree of fault of Davis and the engineer "as well as the previous record of each of them."

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[2] "Article 31. Investigations and Discipline.

"1. Conductors will not be demerited, disciplined, or discharged without just cause. When such action shall become necessary, the accused shall be * * * given an investigation by the proper officer of the Railroad, at which time all evidence in the case will be submitted. A proper record in the case will be kept, authenticated by both parties, and made the basis for any discipline that may be administered, or an appeal to a higher officer."

In addition to the apparent inconsistency of the positions of appellant, we find no error in the admission of Davis's service record. The issue to be decided was whether the discipline imposed was warranted, and certainly Davis's service record is evidence on the validity of his discipline. But appellants say it should be barred simply because of an alleged failure to comply with the procedure outlined for the Railroad's investigation. Yet as we pointed out above, section 153(p) provided for a trial *de novo* "in all respects as other civil suits," except for the special weight accorded the Board's order, and a trial *de novo* contemplates a trial of the entire controversy, including the introduction of evidence not limited to that brought in at the previous hearing. See, *e.g., Spano v. Western Fruit Growers, Inc.*, 83 F. 2d 150, 152 (10th Cir. 1936). Thus *Callan v. Great Northern Ry.*, 299 F. 2d 908, 913 and n.5 (9th Cir. 1961), approved a jury instruction stating that both sides have the right to introduce all available evidence on the correctness of an award. Moreover, *Butler v. Thompson*, 192 F. 2d 831, 833 (8th Cir. 1951), made it clear that procedures set up in a collective bargaining contract for investigations and hearings before company officials do not apply when the statutory machinery for review before the NRAB is invoked. In the case at bar we find no essential unfairness in the admission of Davis's service record; the parties certainly must have known of it before hand and the award of the Board, since it was based on the disparity of treatment of Davis and the engineer, highlighted the need to compare their respective service records. The contention that admission of the service record was error is without merit.

The judgment is AFFIRMED.

STATEMENT OF E. T. HORSLEY, CARRIER MEMBER, FIRST DIVISION, NATIONAL RAILROAD ADJUSTMENT BOARD

My name is Ellsworth T. Horsley and I am presently one of the five carrier members of the First Division of the National Railroad Adjustment Board, having been appointed on January 16, 1956, after serving in the same statutory capacity on the Third Division of the Board from September 1, 1952, to January 15, 1956. For approximately 15 years immediately prior to my membership on these divisions I was employed by the Illinois Central Railroad Co. doing labor relations work in the personnel department. During that period I practiced before all four divisions of the Board, and it was also my duty to negotiate and assist in the negotiation of many contracts and to confer with labor representatives in the settlement or disposition of grievances, all within the broad field of collective bargaining. I earned the degree of LL.B. in 1944 at the John Marshall Law School, located in Chicago, Ill., and have been admitted to practice in the State of Illinois.

The adjustment board is a bipartisan tribunal. The regular members are not at all of the character of judges, but are more closely akin to that of advocates.

On February 16, 1939, the President of the United States wrote to the Attorney General, saying in part:

"I have been greatly impressed by your statement to me that the experience of the Department of Justice in endeavoring to uphold actions of administrative agencies of the Government, when the validity of their decisions is challenged in the courts, leads you to the conclusion that there is need for procedural reform in the field of administrative law."

The President concluded by directing the Attorney General to make a study and recommendations.

The Attorney General appointed a committee with Dean Acheson as its chairman. An exhaustive study was made and a meeting was held in Washington, D.C., at which members representing the National Railroad Adjustment Board were present. In April 1940 the Committee, known as the Attorney General's Committee on Administrative Procedure, released a staff study [1] which had been prepared for it, and which stated with respect to the character of this bipartisan tribunal that:

"The National Railroad Adjustment Board presents the opportunity to observe a bipartisan system in operation. The Board's 36 members are not Government

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[1] The Attorney General's Committee on Administrative Procedure, Railway Labor, Monograph No. 17.

employees, but one-half are employees of carriers and one-half of labor organizations.

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"It is the expressed theory of the act that the members shall be 'associated in interest' with either the carriers or the labor organizations. They are not supposed to be 'neutral persons.'"

The "advocate" character of all members is clearly distinguished from any semblance of "judgeship" in our roles as evidenced by the appearance sheets which are compiled by the Division's executive secretary before each oral hearing. It is somewhat commonplace for carriers and organizations after requesting an oral hearing to find that time and distance prevent appearance at the hearing, but instead of waiving the procedure each will have his "representative" board member act for him. Such an appearance sheet is the following shown, for example, of many that are similar and it documents the fact that the members are a body of advocates even before referee assistance is indicated, for judges do not appear in their own tribunal as representatives of the parties.

"NATIONAL RAILROAD ADJUSTMENT BOARD, FIRST DIVISION

"Representation at oral hearing, 10 a.m., December 8, 1964.

"Parties: BRT—Boston & Maine Railroad, docket 40–451.

"Representation: For carrier: Mr. H. V. Bordwell, carrier member; for employees: Mr. B. W. Fern, assistant to president, Brotherhood of Railroad Trainmen (labor member, First Division, NRAB)."

In this role of nonjudge, partisan membership there is perfect freedom to dispose of claims short of the statutory juncture of "deadlock" (see 45 U.S.C. 153 (1)), based, of course, upon that judgment which comes from practical experience gained from a railroad background. The Supreme Court has referred to this Board's expertise in its decisions. Such judgment should, of course, be exercised in a manner compatible with the traditional conduct of anyone who is representing another, as the Acheson Committee said, as an "associate in interest."

In my 13 years of carrier membership on the Third Division and the First Division, I have been assured not only of my perfect freedom to dispose of claims short of the statutory juncture of "deadlock," but I have been told by Mr. J. E. Wolfe of my responsibility in that direction and have been made aware of the full support of my principals in meeting that obligation.

Our backlog on the First Division, made up of the number of cases from each of the five operating unions, consists of 3,925 cases. Of this number 38.5 percent come from the Trainmen's Brotherhood; 31.06 percent from the Firemen's Brotherhood; 10.34 percent from the Engineers'; 10.60 percent from the Switchmen's Union; and 9.50 percent from the Conductors' Organization.

There are 193 additional dockets pending. Of these 70 are petitions from individual employees. The remainder are joint petitions from two or more of the five operating crafts and a few from railway craft organizations not national in scope. The total of all cases is 4,118.

Twenty-five years ago, the Acheson Committee appointed by the Attorney General considered also the question of disparity between the number of awards entered by the Division without referee, and the number requiring the services of a referee. In reporting upon this point, monograph No. 17 said:

"The bare statistics probably do not tell the whole story, for it must be borne in mind that many of the cases which are decided by the Board without referees are the relatively easy and clear cases which admit of little room for differences of opinion."

Now with the complete absence of an effective screening program on the part of the representatives of those groups of employees whose cases made up 70 percent (trainmen and firemen) of our backlog, coupled with the fact that the unions are plaintiff-petitioner in 99 percent of the cases, there should be no thoughtful doubt that the 352 cases which the Trainmen's Organization reports as disposed of without referee in the 1958–61 period were of that "relatively easy and clear" classification which should have been screened out before formal filing here.

Just 5 years following release of the Attorney General's monograph No. 17, President Roosevelt's attention again became drawn to the procedure for adjudication of railway labor disputes, and in his letter of February 13, 1945, he delegated a special investigator to make a further study of and report concerning conditions on the First Division. President Truman extended the assignment to include an effort to accomplish a solution of the problem by cooperative action between the railroads and the brotherhoods.

The special investigator's report,[2] made to President Truman, recalled that the First Division had been the subject of investigation over practically the entire period of its existence, mentioning that it had never been current in its work and that the number of pending cases "has been generally in excess of 5,000." There are roundly 4,000 at this time. But the report made this suggestion as a form of conclusion:

"If the trivial and unimportant were eliminated as they should be, the Board could properly handle more than 500 important disputes a year with due regard for proper hearings and earnest effort of agreement and, in deadlocked cases, proceedings before referees."

There is a real need for a prescreening of cases to eliminate the filing and processing of "the trivial and unimportant." The instant bills are not directed at this problem; nevertheless it is one of the major causes of the backlog. Moreover, my friends on the labor side agree with me, for they categorically say in their published "Supporting Opinion answering my Dissent in Award 19 276" that they recognize their obligation "to deny claims obviously invalid."

This documented recognition of the union's obligation "to deny claims obviously invalid" is at complete odds with the testimony of one G. R. Johnson as witness for the Brotherhood of Railroad Trainmen before this subcommittee last year.[3] At that hearing the witness Johnson testified that of the Trainmen Brotherhood's cases pending on the First Division, 30 to 35 percent could be classified as frivolous and utterly worthless (Tr. p. 126). Later on the same witness testified that 80 percent of the Trainmen's pending cases could be denied and only 10 percent presented to Referees (Tr. p. 197). The performance of that brotherhood's member on the First Division has not comported with the witness' informed appraisal of the value of his union's pending cases.

On this point of obviously invalid claims the labor members of my division have all said to me at onetime or another that they have no personal control over the submission of claims and that an effective screening of cases before actual filing with the First Division would go a long way toward weeding out the obviously invalid ones. Without such a prescreening of cases by the respective labor organizations, the First Division is being and has been required to docket and place on its working calendar about 800 cases per year.[4]

On July 31, 1963, in a letter to Congressman Williams, the Trainmen's representative[5] then on the First Division said, among other things, that his office decided 352 cases without a referee during the 4 years, 1958 to 1961. This is less than two cases each week by the Brotherhood of Railroad Trainmen. Yet this organization's backlog comprises more than one-third of the total, 80 percent of which are admittedly invalid.

I should like to discuss more fully the reported material which the Trainmen's then Board member has furnished Congressman Williams, first because that organization has represented more road train and yard ground crew personnel than any other union and, second, because of some of the startling accusations it contains.

That member had said much these same things not only to me and my associates but to referees, including that the Board had lost its usefulness and that it was his purpose to see it is scuttled.

With all candor I must say too that instead of scuttling the Board, that member ignored it and departed from its premises, for he was absent from his office and the board room procedures far greater than the majority of the time during the last years of his tenure. The Board work was performed during his absences by his assistant, one G.R. Johnson, the same Mr. Johnson who appeared before your subcommittee as Trainmen's witness last year.

With that letter of July 31, 1963, to Congressman Williams there was enclosed a copy of a letter dated April 5, 1962 written to my Carrier Member associates and me. That letter contains this:

"It will be noted that during the approximate 10 year period covered by this analysis, my office recognized our responsibility by *writing out a total of 929 dockets and handed to the referees a total of 613 dockets wherein no briefs were prepared and where we either stood on the record or, by agreement with the*

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[2] Report of E. J. Connors transmitted to President Truman with letter dated Aug. 31, 1945.

[3] Vol. 2, House of Representatives of the United States, Report of Proceedings, hearing held before Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, amendments to Railway Labor Act, Washington, D.C., July 22, 1964.

[4] No appreciable change indicated for fiscal 1965.

[5] Retired Dec. 21, 1964.

carrier members, furnished the referee prepared findings either denying or dismissing claims, making a grand total of 1,542 dockets." [My emphasis.]

The letter of the former BRT board member acknowledges that the BRT didn't even bother to brief or argue some 613 of the cases deadlocked and assigned to referees. Note particularly that an expenditure of referee funds was occasioned by this use of a neutral deciding officer when the cases admittedly needed no such treatment.

The Trainmen's Brotherhood appointed a member effective February 1, 1965, to succeed the one of whose retirement I have spoken. I am hopeful that the newly appointed board member will launch into the work, so that this "real" backlog can be readily disposed of.

Congressman Williams has already posed to the First Division in his letter of July 12, 1963, through the National Mediation Board, the particularly pertinent questions, "Is there an appropriate framework in the law for eliminating the backlog and delays? If so, why has that machinery not been used?"

The answer to the first question is a categorical "yes," and the answer to the second is that it has been used on this very division, but that it was discontinued at the insistence of the labor representation and that had it not been discontinued there would be no backlog today, nor in all probability for some years past.

Adverting again to the Trainmen member's July 31, 1963 letter to the Honorable John Bell Williams, it certainly addresses these questions and answers correctly at the outset in saying "There are provisions," but it goes on to say, "There is evidence they would be ineffective if invoked." Thus it is recognized that the backlog could be placed before a supplemental board or boards under section 3 First (w) and acknowledges that this was done by the First Division from October 1949 through March 1953. Moreover, it says the two supplemental boards "functioned as well as the regular board."

Certainly the outstanding success of the operation of the supplemental board in conjunction with the First Division, and the fact that this procedure is still available within the framework of the amended act, would be compelling reason for returning to that auxiliary method of processing disputes. Why then does the letter argue that it would be 'ineffective if invoked?"

The answer is that the Trainmen thus far have been unwilling to effect any solution within the framework of existing legislation. This is established by the record.

Section 3 First (w) of the present Railway Labor Act had no comparable provision in the 1926 act but is an important part of the amendments to that legislation. Briefly, this is the history of its application: The National Railroad Adjustment Board was created by the June 21, 1934, amendment of the May 20, 1926, Railway Labor Act. The First Division commenced operating with a backlog of some 1,200 cases pending at the time of the dissolution of so-called train and engine service dispute boards, which were created by and had functioned at the command of the 1926 act. Those boards had consisted of 32 men divided equally between labor and carrier members in contrast with the 10 men constituting the present First Division. Because of this contrast, the later act made specific provision in section 3 First (w) for creation of boards in aid of the regular division. In this reference, Commissioner Eastman testified before the Committee on Interstate and Foreign Commerce, House of Representatives, 73d Congress, on H.R. 7650, that the provision "means that if any of these four divisions * * * finds itself bogged down with cases and liable to become overcrowded so that it cannot render its decisions promptly, it is given authority right in this paragraph to create regional adjustment boards to act in its stead and place to see that that difficulty is taken care of."

On May 20, 1949 the National Mediation Board issued a press release announcing creation of two Boards supplementing the work of the First Division by an agreement between the chief executives of the five operating crafts and representatives of all class I railroads implementing section 3 First (w) of the Act.[8] At that time the backlog before the Division consisted of over 3,000 cases and the Mediation Board expressed its optimism by saying, "It is confidently expected that the tremendous backlog of grievance cases presently pending will be dissipated." Adding, "This backlog of grievances has been a constant source of friction in the railroad industry for more than 10 years, and has been the cause of frequent threats of interruption of railroad service." The Board's announcement concluded with a commendation to the parties upon this proof of amicability in the employment of true collective bargaining.

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[8] The May 19, 1949, agreement is before the committee as exhibit N to Mr. Burner's statement.

On May 24, 1949 the regular members of the First Division by formal resolution in executive session exercised that statutory discretion expressly set forth in section 3 First (w) of the act and established the two supplemental boards commensurate with the terms of the agreement dated May 19, 1949, and terminable in like manner.

Trouble was immediately encountered. The Enginemen's supplemental board had commenced operating on October 10, 1949, 1 week later than the train crew supplemental board. Shortly thereafter the Engineers' member withdrew from active participation as a result of an objection raised against the comopsition of carrier member personnel. That objection having been composed to labor's satisfaction by meetings between the parties to the May 19, 1949 agreement, the enginemen's supplemental board resumed operation on January 16, 1950 after a period of inactivity from October 27, 1949.

But the Board, although eminently productive just as Commissioner Eastman had expected it would be, was comparatively short lived. It was dissolved on March 22, 1953 at the demand of labor representatives and despite the resistance of carrier representatives.

The representatives of the carriers implored the Mediation Board to assist in restoring the needed facility. A letter dated March 4, 1953 was sent to the Chairman of the National Mediation Board by the chairman of the three regional committees for the carriers and copies were given to the chiefs of the five operating unions.[7]

Let me touch upon the objection made by labor representatives and the carriers' manifestation, unavailing as it was, to meet that objection. On this point the letter states:

"Various rumors have reached us that the main objection which the brotherhoods have to the supplemental boards is the setup for a revolving carrier member on each supplemental board and that if the carriers were willing to change that arrangement and place two permanent members on each Supplemental Board that the difficulty might be adjusted. We discussed this matter with you and you undertook to ascertain whether there was any foundation for such rumors. On March 2 you advised Mr. Loomis by telephone that the brotherhoods were unwilling to continue the supplemental boards under any circumstances.

"This whole matter has been considered by the Eastern, Western and Southeastern Carriers' Committees for the National Railroad Adjustment Board and we are authorized to advise you that the carriers are willing to change the arrangement for a revolving carrier member and to put two permanent carrier members on each supplemental board. We are also authorized to advise you that the carriers are willing to consider any other reasonable arrangement which would continue the supplemental boards in force and provide for the more prompt and expeditious handling of contract and grievance disputes."

While the backlog contained over 3,000 cases in 1949, the production of this Division, with referees, during the calendar years of 1947, 1948, 1949 averaged 523 awards (decisions) entered per year. For the period comprising the years of 1950, 1951, 1952, when the section 3 First (w) procedure was in effect for 3 full calendar years the production jumped up to 735 cases per year (average). In 7 full years following the abandonment of the Supplemental Boards the average case output dropped to 266 or almost half of what it was before their creation. The years of 1961, 1962, 1963 have produced a ridiculous average of only 147 awards, even though the facilities existed for restoring a production of over 500 cases per year. The statutory provisions are still present for nearly doubling our production and the carriers are willing to inaugurate it again, yet there is a surprising and alarming apathy on the part of most of the labor members to do anything whatever about it.

I have examined our activity for 10 months of the fiscal year beginning July 1, 1964, and find that the Engineers', Conductors', and Firemen's representatives each argued, to a referee, approximately only one case per month. The Trainmen's substitute representative argued less than two per month, and the Switchmen's Union representative on the average argued only one case every 2 months during the entire period.

This performance is far short of normal production, and when considering that the same number of members turned out 523 cases per year prior to the 1949–53 Supplemental Boards, it means only one thing: the labor members are not ready. Referees appointed and coming here to work are sent home repeatedly at the Government's expense because Labor is "not ready."

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[7] The Mar. 4, 1953, letter is before the commitee as exhibit R to Mr. Burner's statement.

Why, for instance, is the Switchmen's union representative "not ready"? This in itself presents an unusual situation that came about in this way: Because of the comparatively small number of SUNA members, their cases which were taken up on our calendar along with those of the larger BRT organization actually had the effect of permitting SUNA dockets to be decided much more currently than the more numerous BRT dockets. The predecessor of the present SUNA member made quite some capital of this performance by his organization and it was of course put to the best use during membership drives in the field in an effort to wrest yard switching employees away from the BRT. Such union rivalry led the BRT member to demand that the SUNA desist from handling rules claims until the BRT comes abreast—but that has not happened yet. The SUNA has 416 cases pending and not perceptibly moving.

The Conductors' representative is not guilty of a chronic "not ready" response, although he is absent with a frequency and a duration not at all commensurate with active Board membership. He says that his time is needed by his organization and that he is called for assistance "in the field." He has said to me that because of the inactivity forced upon him here by the other organizations chronically being "not ready" and who are responsible for releasing referees, sending them home, he has volunteered to carry out "field" assignments for his organization. His organization has 373 cases pending.

The Engineers' representative on this division is not subject to the charge of not being ready. He, of course, is responsive to his organization's calls for meetings, entailing absences, but his cases are ready for formal presentation in a manner that would contribute to production if referees were not released by the other unions. His organization has 406 cases pending.

The Firemen's union member, I must say with all candor and an equal amount of regret, has announced time and again that the entire thesis of the Adjustment Board's creation and function is wrong because it is inimical to the free demonstration of economic strength in every case of alleged wrongful discharge and alleged breach of collective bargaining agreement. He disagrees with the distinction between major and minor disputes and always has. This board member is, however, not an absentee. He is in his office with less interrupted regularity than any other labor member save that of the Engineers. Moreover, he has a research assistant regularly assigned by the union, which is not enjoyed by either the SUNA or the Conductors' representative. His brotherhood has 1,219 cases pending.

The new member appointed to this division on February 1, 1965, by the Trainmen's Brotherhood has told me that it is his intention to be in regular attendance upon completion of the field assignments he held at the time of his appointment. I am hopeful that we will be able to go forward then with an implementation of the case-value percentages expressed by the Trainmen's Witness Johnson at this subcommittee's July 1964 hearing. Nevertheless, the supplemental board procedure is sorely indicated to attack the imposing backlog of 1,511 cases from the Trainmen's organization.

I respectfully submit two thoughts about the ills of this division. First, there is nothing at all wrong that going to work cannot remedy. Second, because going to work has not been the theme of my good friends in the labor membership, and an overcrowded backlog has accrued, resort should be had to that procedure envisaged by the framers of the law, and I quote: "to see that that difficulty is taken care of." This quotation is from the statement of Hon. Joseph B. Eastman, Federal Coordinator of Transportation, before the House of Representatives Committee on Interstate and Foreign Commerce, on Wednesday, May 23, 1934. The reference, again, is to the existing section 3 first (w), under which the supplemental boards were formulated in 1949, and heralded by the National Mediation Board with optimism and commendation, and canceled by the action of labor.

May I say also that when I was chairman of the first division (a statutory function) for the fiscal year 1960–61 I asked the division's then executive secretary, one J. M. MacLeod, to prepare a statement for me reflecting the performance of the supplemental boards and projecting that picture to reveal what our experience would have been had labor not departed from supplemental boards.

The executive secretary's report made from the official records, of which he was the responsible custodian, comprises three pages. It is appended, identified Document A.

The document discloses that the Supplemental Boards would have taken care of the difficulty by August of 1959, for the report states:

"If the supplemental boards had been continued at 37 awards per month, with other conditions unchanged, the pending load would have been reduced to minus two at the end of August 1959, as shown by table 1."

For a graphic example of the effect of a pronounced apathy in the prosecution of petitioner's cases before this board, let me show you the astonishing age of cases which are next to be placed before the latest referee appointed to this division: The Engineers' case next in line for argument to a referee has been pending on our calendar since September 24, 1958—nearly 7 years. The Firemen's case has been in that status since January 20, 1955—over 10 years. The Trainmen's case dates from June 7, 1955—nearly 10 years. The Conductors' case, like the Engineers', is nearly 7 years old, having been docketed June 12, 1958. The Switchmen's Union of North America is now prepared to argue a case docketed here on January 4, 1957—over 8 years ago.

These are cases among the 99 percent brought here on petition of the claimant—not the carrier. If there is a good, bona fide difference of opinion on their validity, although the Trainmen's witness testified that 80 percent of theirs have no valid basis, then nothing is being done to vindicate the position of the claimant and that is certainly the responsibility of the claimant's representative on this board. All of the procedure by which to prosecute these disputes to a conclusion—to a collection, if the claim is valid—is made available by the Amended Railway Labor Act. In the meantime, claims are aging.

This possibility was voiced by Mr. George M. Harrison, speaking for all of the rail labor unions before the Committee on Interstate Commerce, U.S. Senate, on April 11, 1934. He said:

"They probably will say that the National Board will bog down. Well, now, I don't know anybody that has a greater interest in grievances being prosecuted than the man that originated the grievance. Grievances come about because the men file them themselves."

The subject of recreating a supplemental board or boards under the Railway Labor Act (45 U.S.C. sec. 153(w)) as a demonstrated adequate aid in reducing the backlog of cases accumulated by all of the operating brotherhoods has been actively pursued by my principals and with partial fruition. An agreement was reached to this end with the Firemen's organization, but not with the other four, although we have been in real need of such a statutory device for a long time to reach the Trainmen's case jam (now 1,511 cases).

The Firemen's supplemental board commenced operating on March 15, 1965, with two newly appointed members and the much-needed results have already begun to appear. As of May 21, 1965, 39 decisions (awards) have been entered by these two members without yet resorting to the statutory "deadlock" procedure involving the use of a referee. In these 39 cases 80 percent were found by the supplemental board members to be invalid claims.

In conclusion, the backlog before the First Division is large. But it is not insurmountable. It can be removed through the use of procedures available now in the Railway Labor Act by the reestablishment of a supplemental board or boards in addition to the newly created Firemen's Supplemental Board.

Without fully utilizing these statutory aids the present membership complement of the First Division could not effectively attack the backlog in any reasonable length of time and still meet the cases currently docketed.

However, from my 13 years of experience on the National Railroad Adjustment Board it is my sincere belief that an annual output of from 735 to 980 cases would adequately accommodate the normal filing of claims. This obviously satisfactory performance of a Division having nationwide jurisdiction could be accomplished by each regular Division member handling only from three to five cases in each of the year's 48 working weeks. This remarkably low average weekly caseload per member would permit of adequate time for the most serious consideration of each case and thus serve the interests of the petitioning claimant and the answering respondent in a timely manner.

DOCUMENT A

APRIL 4, 1961.

Memorandum for: Mr. E. T. Horsley, Chairman, First Division.

Re Estimated effect of E/F and C/T Supplemental Boards on First Division backlog.

The Supplemental Boards were in operation from October 10 and 17, 1949 through March 20, 1953. The last three months of 1949 are disregarded in this estimate as not a normal period of operation.

Average number of awards per month was 14.8 for the E/F Board and 22.8 for the C/T Board or a total of 37.7 (say 37). Withdrawals from the Supplemental Boards are not counted as these cases would have been withdrawn from the Regular Board.

If the Supplemental Boards had been continued at thirty-seven awards per month, with other conditions unchanged, the pending load would have been reduced to minus two at the end of August 1959, as shown by Table 1.

Table 2 shows, in columns (1) and (2), how the Division would have fared without the Supplemental Boards, starting with a zero balance September 1, 1959, and assuming no change in withdrawals. However, in the absence of a large backlog of pending cases, it is probably that withdrawals would have been drastically reduced. (Withdrawals during the nineteen months since August 1959 averaged 37.7 per month. During the preceding forty-four months the average was 33.3.) Column (3) shows the number of cases closed by Regular Board awards only and that the pending load would have been 696 March 31, 1961, if withdrawals are not counted. Column (4) shows that the pending load would have been reduced to minus seven if the Supplemental Boards had been in operation and if there were no withdrawals.

No attempt has been made to estimate the increase in cases docketed which would have resulted from reduction in the number of Special Boards due to absence of a substantial backlog. It appears, however, that to continue on a current basis the Supplemental Boards would be required for an indefinate period and that some Special Boards would be needed.

J. M. MacLeod,
Executive Secretary.

TABLE 1

	Pending end of calendar year	Supplemental Board awards	Balance
1953	2,921	[1] 333	2,588
1954	2,964	777	2,187
1955	3,115	1,221	1,894
1956	2,768	1,665	1,103
1957	2,376	2,109	267
1958	2,762	2,553	209
1959	[2] 2,847	[3] 2,849	−2

[1] April through December 1953.
[2] Aug. 31, 1959.
[3] Through August 1959.

TABLE 2

	Docketed	Closed	Awards only	
			Regular board	Supplemental boards
	(1)	(2)	(3)	(4)
1959				
September	60	12	11	37
October	76	24	18	37
November	80	37	33	37
December	58	25	21	37
1960				
January	61	47	17	37
February	58	35	23	37
March	75	78	33	37
April	60	32	26	37
May	73	56	41	37
June	60	58	12	37
July	90	114	20	37
August	61	89	25	37
September	60	23	21	37
October	100	61	35	37
November	77	82	78	37
December	56	309	35	37
1961				
January	68	160	104	37
February	57	20	14	37
March	64	52	31	37
Total	1,294	1,314	598	703
Pending Mar. 31, 1961		(−20)	696	(−7)

NOTE.—Difference between columns (2) and (3) represents withdrawals (716).

STATEMENT OF T. F. STRUNCK, CARRIER MEMBER, THIRD DIVISION, NATIONAL RAILROAD ADJUSTMENT BOARD

My name is Thomas F. Strunck. I am a carrier member of the Third Division of the National Railroad Adjustment Board. My office address is 220 South State Street, Chicago, Ill. I have served in this capacity since January 1, 1962. Prior thereto I served as a carrier member of the Second Division of the Board, as attorney and assistant general attorney for the Union Pacific Railroad, Omaha, Nebr., and examiner for the carrier members of the First Division of the Board.

SCOPE

This statement will be limited to facts concerning caseload and numbers of cases handled on the Second, Third, and Fourth Divisions of the National Railroad Adjustment Board. It will contain a brief background review to aid in understanding the current statuts of case handling on each of these Divisions, and will consider the backlog on the Third Division. It will also treat of the steps which have been taken to reduce that backlog, the effect of such procedures and some estimate of when the backlog might be reduced to reasonable proportions.

INTRODUCTION

The three divisions being considered were established as part of the National Railroad Adjustment Board by amendment to the Railway Labor Act in 1934. Section 3 provided for the establishment of four divisions of the national board including the divisions under consideration, and defined their jurisdiction. Disputes and grievances involving shop craft employees are under the jurisdiction of the Second Division. Those involving other nonoperating employees such as clerks, maintenance-of-way employees, signalmen, telegraphers, dining car employees, sleeping car conductors, etc., are assigned to the Third Division. Disputes involving employees not under the jurisdiction of the other three divisions of the Board are under the jurisdiction of the Fourth Division (Railway Labor Act, sec. 3(h)). The crafts subject to the jurisdiction of the three divisions collectively represent 70 percent of employees subject to the National Railroad Adjustment Board.

The Second and Third Divisions consist of five carrier and five labor members each; whereas the Fourth Division consists of three carrier and three labor members.

The records of the National Railroad Adjustment Board reveal that the organizations are the petitioners in 99 percent of the cases appealed to the Board. On the three divisions considered in this statement, the vast majority of cases have been referred to a neutral for decision.[1]

SECOND AND FOURTH DIVISIONS

These divisions have not experienced particular difficulty in maintaining a reasonable balance between cases received and on hand and those handled to a conclusion.

Since it commenced operating in 1934 through June 30, 1964, a 30-year period, the Second Division has docketed 4,776 cases, disposed of 4,506, leaving on hand for disposition 270.[2]

Since the year the Board initiated operations through June 30, 1964, the Second Division has had on hand for disposition at the end of each fiscal year an approximate average of 161 cases with the total never exceeding 379.[3]

The 270 cases on hand June 30, 1964, is the smallest number of undisposed cases in the last 5 fiscal years. Cases disposed of in the year ending June 30, 1964, were 283. This constitutes the highest number handled in the past 4 fiscal years. For the 10-month period commencing July 1, 1964, the Second Division has docketed 153 cases and disposed of 168, leaving on hand 256 for disposition as of April 30, 1965.

While the Second Division has been making progress in recent years, it has a few minor problems which have delayed its case disposition. Liberal extension of time to the parties and the limited amount of time some referees have allotted to their work on that Division have been factors tending to extend time required

[1] 30th Annual Report of the National Mediation Board.
[2] Cumulative statistics taken from p. 88, 30th Annual Report of the National Mediation Board.
[3] Data taken from annual reports of the National Mediation Board.

for disposition of a docket of cases. Also, the carmen craft handles approximately 50 percent of the cases before the Division and since such cases are assigned to one representative this has caused some delay to the handling of all cases.

None of these elements present insuperable obstacles. Minor modifications in Division procedure will correct the situation. The Division members concerned have initiated steps to change procedure to expedite case handling. A continuing review of the rules of procedure and the cooperation of all concerned toward prompt modification as demanded will prevent any serious difficulty from developing on this Division concerning case handling. In any event, these are matters for adjustment among all those involved and do not require any change to the Railway Labor Act.

The Fourth Division in the same 30-year period terminating June 30, 1964, docketed 1,948 cases, disposed of 1,917, leaving on hand 31.[4] In the most recent 10-month period terminating April 30, 1965, 85 cases were docketed and 68 disposed of, leaving 48 pending.

THIRD DIVISION

The Third Division is being treated separately because of certain unique circumstances and special problems. It has jurisdiction over disputes involving employees of organizations which represent the largest membership in the railroad industry.[5] Undoubtedly this is a factor in the greater case volume before this division.

The statistics of the Third Division relating to volume of cases reveal that accumulation of undecided cases on hand was not excessive from the inception of the Board through fiscal 1955.[6] The facts indicate that there were 616 cases on hand at close of fiscal 1955 and 1,455 at the close of fiscal 1956.[7]

It is felt that this marked increase was due principally to agreed changes in the method of handling grievances. Prior to the August 21, 1954, agreement, there was no general provision concerning time limits for processing disputes. Many disputes were not progressed for years, and a number of cases after being progressed through all steps on the property lay dormant for long periods and then were taken to the Board. Various examples of such grievances not progressed with diligence are to be found on pages 5–7 of carriers' exhibit No. 47 filed with Emergency Board No. 106, as well as in the testimony of Carrier Witness Day before that same Board (R. 4427–4431, reported at pp. 1286 and 1287 of the transcript of proceedings of Emergency Board 106).[8] As an example see Third Division award 8140 which involved a delay of over 12 years.

On August 21, 1954, the major carriers, represented by the Eastern, Western, and Southeastern Carriers' Conference Committees, and the cooperating railway labor organizations, including most of those concerned with the Third Division, entered into an agreement effective January 1, 1955, which imposed certain time limits on the initiation of claims and grievances and their processing at various levels including appeal to the Board.[9] In general, the rule provided that if the employees or their representatives defaulted in handling, the claim would be barred. If the railroad defaulted it would be required to allow the claim as presented regardless of its merits. For claims upon which the highest designated officer had ruled prior to the effective date of the agreement, a period of 12 months was allowed for appeal to the adjustment board. The time limit provisions required that all disputes, including those which had accumulated over the years, be progressed and appealed to the adjustment board within stipulated periods, otherwise they became barred. This resulted in disputes that had been lying dormant for long periods on the carriers being appealed to the Third Division.

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[4] P. 88, 30th Annual Report of the National Mediation Board.

[5] Crafts under jurisdiction of the 3d Division constitute 44 percent of employees subject to the National Railroad Adjustment Board.

[6] Exhibit F to Mr. Bruner's statement copy of which so far as it relates to the 3d Division is attached.

[7] Ibid.

[8] The appropriateness of a time limit for progressing claims and grievances had earlier been recognized by impartial authorities. For example, the Attorney General's Committee on Administrative Procedure in 1941 recommended that, since the National Railroad Adjustment Board did not establish "time limitations which would protect against the assertion of stale claims," the Railway Labor Act be amended to do so.

[9] Art. V of agreement dated Aug. 21, 1954.

As statistics presented by Mr. Burner indicate, 1,170 cases were docketed in fiscal 1956. This represented more than a 100-percent increase over any preceding year. Such an increase in the first year of effectiveness of the time limit rule was to be anticipated. However, the rule provides no clue as to why the number of cases submitted should have continued at an abnormally high level during the years after the rule became effective and its provisions became well known and were being followed.

While the number of cases disposed of since 1956 has been in a general uptrend, new cases have been docketed at an accelerated rate. During the 9-year fiscal period, commencing 1955, cases received have been in a range of 615 to 1,170 each year, averaging 801 per year compared to a 21 year pre-1956 annual average of 363.[10]

The number of undecided cases grew continuously to 2,646 on June 30, 1961, reaching a high of 2,731 a year later. Faced with this mounting backlog, the carriers and the organizations concerned through their representatives had previously commenced a series of procedures designed to remedy the progressively adverse situation.

The carriers' territorial committee for the National Railroad Adjustment Board and the committee representing labor organizations participating in the third division executed an agreement on March 28, 1961 establishing a supplemental board as provided for in section 3, first (w) of the Railway Labor Act.[11]

During the first fiscal year the supplemental board was in operation, from July 1, 1961 to June 30, 1962, both the regular and the supplemental board disposed of 688 cases compared with 486 in fiscal year 1961.[12] Beginning July 1, 1961, 1 month after the supplemental board commenced operations, through April 30, 1965, the regular and supplemental boards disposed of 3,595 cases averaging approximately 936 per year, which is an average increase of 92.5 percent over the output for 1961. Statistics for the most recent period July 1, 1964, through April 30, 1965 reveal 879 cases disposed of which projects to an annual rate of about 1,055. Also, concerning the delay problem, it is of interest that the cases now being processed to a conclusion by the regular and supplemental third divisions bear a docket closing date subsequent to August 1962.

The statistics on the backlog of cases reveal a consistent increase from 1955 when it stood at 616 to a high of 2,731 at the close of fiscal 1962. The first year immediately prior to the operation of the supplemental board the backlog increased by 247 cases. While it increased slightly after the first year the supplemental board operated, this was due primarily to a greater case influx since the two boards substantially increased output.

As of July 1, 1964, the number of undecided cases was 2,197. The number of undecided cases as of April 30, 1965, was 1,910. Therefore, in the 3-year 10-month period both boards have been functioning, we find the backlog has been reduced by 821 cases.

In addition to the establishment of the supplemental board, further steps ensued to resolve the backlog problem. These are outlined in Circulars Nos. 1 and 5 of the National Railway Labor Conference dated May 31, 1963, and October 11, 1963, respectively, and attached to Mr. Burner's statement as exhibits K and L.

The carriers and the labor organizations subject to the third division agreed to an optional procedure for cases pending before the third division as outlined in Circular No. 1 referred to above. Individual carriers and the labor organizations were encouraged to make a further effort on the properties to adjust cases pending before the third division, and special boards of adjustment provided for in section 3, second of the Railway Labor Act were recommended to be established where appropriate. It was suggested that in special circumstances such boards might be created to handle disputes involving more than one labor organization.[13]

Any disputes pending before the division subject to these procedures are held in abeyance and later withdrawn from its docket if resolved. Since the institution of the procedure concerned with settlement on the property or by special

[10] See exhibit F to Mr. Burner's statement, attached hereto.
[11] See exhibit I to Mr. Burner's statement.
[12] See exhibit J to Mr. Burner's statement.
[13] This represented a departure from normal procedure whereby such boards customarily handle disputes involving a carrier and one labor organization.

boards of adjustment, through June 30, 1964, 219 cases have been withdrawn from the division's working docket. So far this fiscal year 155 cases have been withdrawn.

On May 31, 1963 the carriers and four labor organizations subject to the jurisdiction of the third division executed an agreement, considered in Circular No. 5 referred to above, providing for the establishment of a disputes committee to decide issues involving the interpretation of particular national agreement provisions outlined therein.

Among the questions referable to the disputes committee are those involving time limitations, holiday and vacation problems. Cases involving disputes committee questions may be submitted by the parties to the disputes committee directly from the individual railroad. Cases pending before the third division may also be submitted to the committee with the proviso that they will remain pending before the division and if not disposed of by the committee, may be returned to the division for disposition of issues still remaining open and not under the jurisdiction of the committee.

Disputes already referred to the disputes committee on the basis of the issues and agreement provisions involved tabulate as follows:

Vacation	139
Vacation, Articles II (1954) and III (1960): Holidays	7
Articles II (1954) and III (1960): Holidays	51
Article IV (1954): Use of furloughed employees	5
Article V (1954): Time limit	511
Article V (1954), Time limit and articles II (1954) and III (1960): Holidays	3
Article V (1954): Time Limit and vacation	13
Articles VI (1954) and III (1962): Advance notice of force reduction	16
Total	745

As of April 30, 1965, 745 cases have been held in abeyance and referred to the disputes committee through April 30, 1965. The effect on the backlog of the disputes committee procedure is not subject to precise estimate. In many of these cases decisions on the national agreement issues will dispose of the disputes before the third division in which such issues are raised. In other cases, even when they do not dispose of a docket, such decisions will assist the third division in disposing of it by getting out of the way issues which have proved to be troublesome and time-consuming when handled by the division itself. Accordingly, this procedure will effectively reduce the division's backlog. Some disputes will be returned to the division for further action since they contain issues not under the jurisdiction of the disputes committee.

The majority (527) of the Disputes Committee cases present issues involving an interpretation of article V, the time limit of the August 21, 1954, agreement. The experience of the Third Division has been that in about 75 percent of the cases in which such questions were discussed by the Board, decisions on those issues were completely dispositive of the entire dispute. This is because these questions are threshold issues. Assuming a similar pattern in the decisions of the Disputes Committee approximately 395 of the 527 such cases will be finally disposed of by that committee.

Of the remaining cases before the committee the next largest categories involve vacation and holiday issues, the resolution of which usually completely disposes of the docket. There are 197 such cases currently before the Disputes Committee. Accordingly, an educated guess would suggest that close to 600 of the 745 cases referred to it will probably be finally decided by the Disputes Committee. The Division also has made certain procedural modifications designed to expedite case disposition. The Division no longer requires all members to partake in hearings before referees at which the petitioner and respondent present their cases. The parties now appear only before the referee and the carrier and labor members to whom the case is assigned. This has released the eight other members of the Division for work on their dockets.

Also, where appropriate, pending cases involving similar issues and the same parties have been grouped by agreement of the carrier and labor members to be consolidated and handled together. This has eliminated much duplication of effort by avoiding separate handling.

The results of the various remedial procedures outlined above have been impressive. As previously stated, since these measures were instituted, case disposition as of April 30, 1965, averages 936 per year compared with 486 cases in fiscal 1961. The backlog has declined by a total of 821 cases.

With the exception of the supplemental Board, future effects on Division work of the steps outlined cannot be forecast with accuracy. However, indications are that the procedures adopted will have a considerable influence on Division production in the period ahead.

In the light of the various considerations outlined, the carriers estimate that the Division can dispose of approximately 1,050 cases annually. Such a prediction is reasonable on the basis of recent experience and the future impact of the procedures discussed. This is predicated on the assumption that sufficient funds are made available to operate at maximum capacity.

In calculating the future effect of these procedures, we will now consider their probable influence on case input. In the past 4 fiscal years ending June 30, 1964, it has averaged 750 cases per year. In the 10-month period terminating April 30, 1965, input has averaged approximately 59 cases per month, which projects annually to 710. Assuming the number of disputes in process on the property is not above average and the level of new disputes does not substantially increase, it is reasonable to conclude that the average case input to the Board should not appreciably increase. In fact, there is a possibility of its decreasing as the settlement procedures on the property are invoked, since some cases in handling may be subjected to such procedures in lieu of appealing them to the National Railroad Adjustment Board.

As the Division decides more disputes, it will broaden its body of precedents to include issues which are involved in cases being handled on the property. These decisions will serve as the basis for settling many such cases and prevent their appeal to the Board.

Also, future decisions of the Disputes Committee may serve as a basis for disposition of dockets on the railroads which might otherwise be appealed to the national board.

In any event, even if the average input remains at approximately 750, and the output averages 1,050 cases annually, the backlog of the Third Division should decline almost 300 cases per year. If this calculation is combined with the 600 cases it is estimated the Disputes Committee will decide of those currently pending, the caseload should be reduced to reasonable working proportions by the close of fiscal year 1967. This would leave approximately 650 cases on the working docket by that date, as compared to an estimated annual output of 1,050 cases. Accordingly, for all practical purposes the Division could then be considered current.

While there are some uncertainties in making a prediction, there is good reason for optimism. After the Supplemental Board completed its organization and administrative phases and acquired additional experience, the number of cases handled by the Division as a whole has consistently increased. It is also to be noted that the other steps considered previously are of relatively recent origin and their full impact lies in the future. The indications are that these factors will have a very beneficial effect on the operation of the Third Division and the endeavors being made by all concerned to bring the workload within reasonable limits.

Regardless of the uncertainties in evaluating in detail the effect to date and particularly in the future of the various steps taken the important inquiry in both instances is the cumulative result.

The production level of the Division has been substantially increased since the above procedures have been applied. At the same time the backlog has registered a definite decline.

These excellent results are most encouraging. It is obvious that they are directly related to the procedures outlined. What has been accomplished demonstrates in a dramatic way the effectiveness of the steps taken in reducing the backlog.

It is extremely significant to note that these procedures and modifications have been adopted within the framework of the Railway Labor Act.

Accordingly, it is submitted that on the basis of the experience of the Second, Third, and Fourth Divisions, there exists no adequate basis or justification for amending the Railway Labor Act as proposed. On the contrary, the present

legislation has demonstrated its flexibility to meet changing conditions. The experience of the Third Division particularly has proven that reasonable minds sincerely seeking a solution to the problems of the Adjustment Board can find one within the limits of the act.

EXHIBIT F

3d Division

Year ending June 30—	Docketed	Decided	Withdrawn	Pending at end of year
1935	150	81	3	66
1936	200	214	36	
1937	197	192	29	85
1938	201	164	43	79
1939	245	153	52	119
1940	327	252	45	194
1941	333	282	74	181
1942	406	302	69	216
1943	361	216	145	216
1944	332	293	91	164
1945	335	258	75	166
1946	337	219	80	204
1947	387	293	53	245
1948	467	334	40	338
1949	495	400	71	362
1950	420	422	32	328
1951	459	441	40	306
1952	575	431	33	417
1953	463	363	40	477
1954	404	420	33	428
1955	530	321	21	616
1956	1,170	264	67	1,455
1957	887	273	325	1,744
1958	763	325	80	2,102
1959	770	243	221	2,408
1960	615	312	312	2,399
1961	733	359	127	2,646
1962	773	544	144	2,731
1963	779	786	126	2,598
1964	715	897	219	2,197
1965 [1]	592	724	155	1,910

[1] Covers 10 months, July 1, 1964, through Apr. 30, 1965.

NOTE.—The number of cases decided is not the same as the number of awards (which excludes awards in withdrawn cases) shown in exhibit E, inasmuch as in some instances a single award covered more than 1 case and in other instances more than 1 award was made in a single case. The number of cases docketed, and the number pending as of the end of the year, are as reported (through June 30, 1963) by the National Mediation Board in its annual reports. Because of variations in the basis on which such reports were prepared, there are apparent minor discrepancies in the figures for certain years, and the totals of columns will not balance exactly with the number of cases pending as of June 30, 1964.

Source: Annual reports of National Mediation Board, and available records.

Mr. WOLFE. Thank you, Mr. Chairman, and in addition we have furnished your subcommittee 5 copies of this testimony and 45 additional copies will be provided in the matter of a few days.

Mr. STAGGERS. All right.

Mr. WOLFE. Mr. Burner's statement presents historical and other background information we believe you will find helpful, as well as statistical tabulations which are useful in identifying the nature, causes, and magnitude of the backlog problem. Mr. Horsley is a longtime carrier member of the First Division of the Adjustment Board and Mr. Strunck a carrier member of the Third Division of the Board. Their statements offer firsthand insight into the backlog problem on those two divisions where the problem has been the most acute and persistent. The views of these gentlemen as to methods for alleviating the problem, based on knowledge gained from their day-to-day experience as working members of the Board, also are of considerable value.

Mr. W. S. Macgill has devoted virtually his entire career to the fields of railroad labor law and labor relations. Among the many important posts he has held in the industry is that of Chief Administrative Officer of the Adjustment Board for the carriers, in which position he was responsible for formulation of means to improve the efficiency and economy of all four Divisions of the Board. Mr. Macgill is uniquely qualified to discuss methods of correcting the problems of the Board within the framework of the present law and to assess the legal and other implications of the proposed changes in the law. His statement points out the constitutional and other legal infirmities of the three bills pending before your subcommittee.

I will first discuss H.R. 704. This bill would amend section 3, first (m) of the Railway Labor Act by deleting the phrase "except insofar as they shall contain a money award." The sentence in which this phrase appears, as it now reads, is as follows:

> A copy of the wards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award.

If the proposed amendment were enacted, the sentence would read:

> 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.

Apparently the purpose of the bill is to deprive the carriers of their right of access to the courts. Under existing law, if a carrier declines to comply with an adverse Adjustment Board award, the claimant may bring an enforcement action in the Federal district court and in such a proceeding the parties are entitled to a de novo review on the merits, although the Adjustment Board award is prima facie evidence of the facts therein stated.

H.R. 704 as originally drafted would not have accomplished the apparent purpose of those who advocate its passage. Moreover, if it were redrafted so that it would have the effect of depriving the carriers of recourse to the courts, I am advised that it would be subject to constitutional challenge. Finally, and of overriding importance, there is no reason for an amendment of this character, either in its present form or any other form. The carriers' right of access to the courts has not been the subject of abuse, and there simply is no problem that has arisen in the operation of the Railway Labor Act to which this proposed amendment is responsive. I will discuss each of our objections to the bill in somewhat more detail.

First, I have stated that the bill, as originally drafted, would not effectuate the apparent purpose of its proponents to foreclose judicial review on the merits of Adjustment Board awards.

The amendment offered yesterday by Congressman Williams perhaps would do that. We have not had an opportunity to study those additions to the bill, so I am not prepared to express a definite view on the effect it would have.

However, in the remainder of my discussion, I will assume that the bill as revised would prevent judicial review of Adjustment Board awards.

Second, I expressed the view that if the Railway Labor Act were amended to deprive the carriers of access to the courts, serious ques-

tions of constitutionality would arise. This point is dealt with in Mr. Macgill's statement, to which I respectfully invite your attention. It will suffice for present purposes to note for your consideration that on more than one occasion the courts have indicated that if it were not for the availability to the carriers of judicial review on the merits, the provisions for finality of Adjustment Board awards might run afoul of the "due process of law" guarantees of the Constitution.

Mr. STAGGERS. Would you yield right there just a moment? If this is true, is it not a fact that an employee cannot go to court, and if his claim is denied and a denial is made, that it is a denial of a due process of law?

Mr. WOLFE. I intend to come to that, Mr. Chairman. I intend to discuss that very thoroughly, and I hope very frankly; I am not a lawyer, I do not intend to go beyond generalities in regard to the constitutionality of the act or its lack of constitutional substance. But I will discuss later on in my testimony the question that you now propound in regard to the alleged inequities in the act as it now exists pertaining to the right of one to seek judicial review as a statutory right and deny the other party that same right.

Mr. STAGGERS. I hope you do cover it because we are only trying to, as I say, bring out some kind of equity and justice as we see it and we want to get your complete views.

Mr. WOLFE. Thank you, Mr. Chairman, that will be my purpose here.

Mr. WILLIAMS. May I say, in the introduction of this legislation and sponsorship, I have no desire whatsoever to deprive anyone of his constitutional rights, obviously.

The chief purpose of this legislation is to provide some means by which these cases may be resolved with finality and expeditiously in the interest of insuring justice for both employers and employees.

I hope, Mr. Wolfe, that in the course of your statement, recognizing the situation as it exists which certainly is not a good situation, that you might make some suggestions as to a possible remedy.

Mr. WOLFE. I intend to do that, Mr. Congressman. My recommendations will be specific.

Mr. WILLIAMS. Good.

Mr. WOLFE. They will address themselves to the correction of anything that needs correction. I will attempt to the very best of my ability, to stay within the confines of constitutional procedure as that matter has been explained to me by my advisers.

Mr. WILLIAMS. I believe I made the statement yesterday that I did not consider these bills necessarily the only answer to the problem—that these bills had been presented as the only suggested answer thus far. If someone has a better answer, as far as I am concerned, a better remedy, I would certainly welcome any such suggestion. We recognize that a very bad and intolerable situation exists and we feel that it is the responsibility of the Congress, representing the public interest, to take such action as it deems appropriate in order to eliminate this situation. I hope that you will have some constructive suggestions.

Mr. WOLFE. I thank you very much, Mr. Congressman.

Third, I stated that there has been no problem arising from the operation of the Railway Labor Act which H.R. 704 would even pur-

port to correct. I will go further and say that if the carriers were not permitted judicial review of adverse Adjustment Board awards (entirely aside from constitutional considerations), unjust rulings of Adjustment Board referees, even those involving many thousands or hundreds of thousands of dollars, would be immune from challenge, representing a grave defect and inequity in the law. Mr. Macgill's statement describes the nature and extent of the injustices which would eventuate from such an infirmity in the act.

In light of the foregoing, the question, of course, arises as to the objectives of the proponents of H.R. 704. Is there any real or fancied abuse in the operation of the act to which the proposed amendment is addressed? The answer to that is emphatically negative. I suppose there may have been imputed to the carriers by some labor interests a dilatory or obstructionist scheme whereby through indiscriminate if not wholesale noncompliance with Adjustment Board awards, legitimate claims are delayed for long periods or eventually simply disappear through passage of time. Any such claim of abuse is illusory and casts doubt on the sincerity or knowledge of its authors. I do not represent to you gentlemen that the carriers are always right in their handling of disputes or that no carrier has ever failed to comply with a valid Adjustment Board award.

Mr. WILLIAMS. At that point, Mr. Wolfe, let me ask this question: I have been told by someone that in no case where a monetary award had been made had the carriers gone along without having the courts to force them to make the payment; is that correct?

Mr. WOLFE. I want to be sure I understand your question.

If the question is this, Mr. Congressman, that in no case have the carriers applied a money award without compelling the unions to go to court, the answer is emphatically no. The percentage of cases that have gone to court is probably one-thousandth of 1 percent.

Mr. WILLIAMS. In other words, you say one-thousandth of 1 percent—where a monetary award has been made—presumably by a referee, because they generally deadlock on these cases—and the referee has to make the award; are you saying that in nine hundred ninety-nine out of a thousand cases the carriers comply without being carried to court?

Mr. WOLFE. Yes, I say that. I say that on my railroad there never was a case that went to court. Not a single one. And many railroads are in a position to say the same thing.

Now, there are certain cases, and I ask your permission to depart from the record—there have been conflicting awards on the same property, involving exactly the same issue.

Now, the carrier, under the act, is required to comply with an award. Now, compliance within the meaning of the act, as I understand it, doesn't necessarily mean simply satisfying that individual claim. This is an interpretation based upon a provision of a collective agreement. The compliance in spirit as well as in fact means that thereafter you adjust the situation on your property on the basis of the new interpretation placed upon that provision. Here is a carrier with two awards, one diametrically opposed to the other.

Now, the carriers sought relief from the courts by not applying these awards. In a sense it was sort of a declaratory judgment proceeding. How could the carrier comply with both? One of the disputes was—

I suppose this will be introduced into the record by BLFE, as a stand-out case—this was a case by a special board of adjustment—the very thing that you would create under these amendments where the parties bound themselves to comply. The decision was favorable to the carrier. The union immediately submitted the same dispute, different dates, same dispute, and involving the same claimants to the adjustment board and there the board sustained the claim. The carrier refused to apply that award because they couldn't comply with both the decision and the award. That case went to the Supreme Court of the United States. The carrier's action was confirmed.

Now, that is the type of dispute generally speaking where judicial review has been desired by the railroads and following the only statutory course it could follow, the carrier did not comply with the award, thus judicial review was obtained and the carrier's action was sustained.

Mr. SPRINGER. Mr. Chairman, might I ask a question?

Mr. STAGGERS. Surely.

Mr. SPRINGER. Mr. Wolfe, in line with the things that you have used here in referring to these tables, over on page 4 of the tables, after the blue sheet, let's go to last year's—I guess it is the last year there that there is a record on. This is page 4 after the blue sheet. Let's go to 1963 which is the latest year, apparently that there are figures on. There are 3,646 disputes pending. Any disputes docketed are apparently—any new disputes or the new disputes docketed are apparently 637. The disputes closed is 403. This leaves 3,880 pending.

Now, there is an increase of 234. Do you see those figures?

Mr. WOLFE. Yes.

Mr. SPRINGER. Let me ask you, why should there be 3,650 disputes pending at any time?

Mr. WOLFE. There shouldn't be, and as I proceed with my testimony I will give you what I think——

Mr. SPRINGER. Could you tell me now because this meeting may close up in 5 minutes. I do not want to lose my train of thought until tomorrow. I want to keep it today, if I can. I will do my best, to listen.

Mr. WOLFE. I will do my best, Mr. Springer.

The first division, as you know, has statutory jurisdiction over all disputes involving the operating brotherhoods.

Mr. SPRINGER. Yes.

Mr. WOLFE. That means the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen & Enginemen, Switchmen's Union of North America, Brotherhood of Railroad Trainmen and Order of Railway Conductors & Brakemen. Now, first let me say, there should not be that many disputes. I have already answered that.

Your question is, Why are there that many disputes and that, of course, is the thing that we are trying to correct, all of us, Congressman Williams and everybody who has an interest?

Now, three of the unions are not in bad shape, the Switchmen's Union of North America has roughly 400. Over 300 of those are on 1 railroad and they are working out a special board of adjustment.

Now, the Brotherhood of Locomotive Engineers has a handful of disputes and that is because they screen their cases. They don't let them go to the board unless there is some semblance of validity.

The Brotherhood of Locomotive Firemen & Enginemen had a great many disputes. That union——

Mr. SPRINGER. Roughly, how many did they have?

Mr. WOLFE. 1,200 of the 3,800. Now, they agreed with us to set up a special panel. We put a carrier member, they put a union member. Those two men, in a matter of a month and a half turned out I would say somewhere around—39 in a month. That's 2 men who have turned out 39 disputes. Now, those two men are going to work out that backlog, work it over.

Mr. SPRINGER. Is that part of the 3,646?

Mr. WOLFE. Yes; it is.

Now, the BRT has the most disputes.

Mr. SPRINGER. Brotherhood of Railroad Trainmen?

Mr. WOLFE. That's correct.

Mr. SPRINGER. How many did they have, just roughly?

Mr. WOLFE. We have a breakdown here——

Mr. SPRINGER. 200, 400, 600?

Mr. WOLFE. 2,000 is probably closer. It is 1,511.

Mr. SPRINGER. Out of that 3,600—1,500 did you say?

Mr. WOLFE. 1,511.

Mr. SPRINGER. That is what?

Mr. WOLFE. Two organizations had 2,700 of the 3,600.

Mr. SPRINGER. That is the Brotherhood of Trainmen and what?

Mr. WOLFE. Firemen.

Mr. SPRINGER. The Firemen and Railroad Trainmen have approximately 2,700 out of 3,600, is that correct?

Mr. WOLFE. Yes. The others we have taken care of. We are going to work that backlog off through this special panel.

Mr. SPRINGER. Now, where are the remaining 900?

Mr. WOLFE. That is SUNA.

Mr. SPRINGER. What is that?

Mr. WOLFE. Switchmen's Union of North America. BLFE. That's the Engineers and the Conductors—Order of Railway Conductors & Brakemen.

Mr. SPRINGER. Practically all of them are within five unions?

Mr. WOLFE. They are all within five unions.

Mr. SPRINGER. Out of 21 brotherhoods?

Mr. WOLFE. More than that. Standard brotherhoods, about 24.

Mr. SPRINGER. Are the Railroad Trainmen the largest brotherhood?

Mr. WOLFE. Numerically, no. The largest brotherhood would be the Brotherhood of Railway Clerks. That's the third division, and the Maintenance of Way Employees, then the shop craft unions that are subject to the second division.

Mr. SPRINGER. So, why is it then, we say three-quarters of these 3,600 disputes are within five brotherhoods? Is there any reason for that?

Mr. WOLFE. Well, their rules are much more complicated, but I think the primary reason is the rivalry between those brotherhoods for membership.

Mr. SPRINGER. Let me ask you this. Are alarming numbers of these disputes over representation or disputes between brotherhoods rather than disputes between you and the brotherhood?

Mr. WOLFE. There are no disputes as to representation, Mr. Congressman. But there are literally hundreds of disputes where one

organization is handling the dispute to gain an advantage over the other organization for membership solicitation purposes. Now, let's straighten it out.

The Brotherhood of Railroad Trainmen represent conductors, trainmen, and yardmen. The Order of Railway Conductors & Brakemen represent conductors. Then there is the Switchmen's Union of North America that represent the yardmen.

Now, on any property where the Brotherhood of Railroad Trainmen represents yardmen, the SUNA will have a certain number of men, even though the BRT is the bargaining agent. Where the ORCB, the conductors have representation, there will be a number—a considerable number of employees working as conductors who are represented by the Brotherhood of Railroad Trainmen.

Mr. SPRINGER. Let me ask you, then, is it possible for one brotherhood to recruit members that really do work in another brotherhood?

Mr. WOLFE. Yes, sir.

Mr. SPRINGER. That is possible?

Mr. WOLFE. So far as the operating brotherhoods are concerned.

Mr. SPRINGER. That is only four.

Mr. WOLFE. Five. That does not apply with the non-ops.

Mr. SPRINGER. The non-ops are all categorized?

Mr. WOLFE. If you are a machinist you have to belong to the Machinists' Union.

Mr. SPRINGER. And you canont solicit the machinists, is that correct?

Mr. WOLFE. No other union.

Mr. SPRINGER. These other five may solicit members in another brotherhood, is that correct?

Mr. WOLFE. That is correct.

Mr. SPRINGER. They legally can do it, or is this just something they do?

Mr. WOLFE. In the 1951 amendment to the Railway Labor Act, which permitted union shops, there is a proviso to the effect that membership in any standard union, insofar as the operating employees are concerned, would fulfill the requirements of any union shop agreement.

In other words, I could be working as a conductor and belong to the Trainmen, even though the conductors were the bargaining agent and I would fulfill my union shop obligation.

Mr. SPRINGER. Your opinion, then, from what you have said here, that chiefly, this 3,600 is involved in those 5 operating brotherhoods?

Mr. WOLFE. All of them involve the five operating brotherhoods.

Mr. SPRINGER. You mean all this 3,600?

Mr. WOLFE. Yes, sir. Those are all First Division disputes. And the First Division only has jurisdiction over the operating brotherhoods. The train service employees, that is.

Mr. SPRINGER. Are there any disputes pending on any of the other 18, then?

Mr. WOLFE. Well, the Third Division, about which I will testify later, we had a backlog.

Mr. SPRINGER. How many?

Mr. WOLFE. We have 2,800-and-some-odd disputes.

Mr. SPRINGER. How many?

Mr. WOLFE. We got together and we set up a supplemental board and we have reduced that to 1,900 in the matter of a year.

Now, we have taken another 600 out of that 1,900 and given them either to disputes committees which we have or to special boards of adjustment. So, in other words, that backlog is about 1,300 and with the Supplemental Board we are turning out about a thousand awards a year. So the backlog would be completely dissipated, in not to exceed a year, and let's say 3 months.

Mr. SPRINGER. The Third Division, how many brotherhoods are in the Third Division?

Mr. WOLFE. It is the clerks, maintenance of way, dispatchers, telegraphers, the dining car employees. I believe that's it.

Mr. SPRINGER. In the Second Division and Fourth Division, you do not seem to have very much.

Mr. WOLFE. The Second Division is in good shape and so is the Fourth Division. The Second Division—there is only one organization that has any disputes to speak of, the Brotherhood of Railway Carmen and we are working with them and we hope and I think we have reasons to believe that something will be worked out.

Mr. SPRINGER. Let me ask you this. Would you repeat for me, so we can get this clearly before us why there are all these disputes in the First Division and Third Division, in your opinion?

Mr. WOLFE. Well, the Third Division, I think, I think one cause is that we entered into time limits on the handling of claims—we entered into an agreement which would expedite the handling of the claims on the property. Some of the unions would let their claims rest, they wouldn't progress them for years. You might have a claim 5 or 6 years old that had never been moved off the property. So we put a time limit.

Now, we realized that the time—we realized that that was going to expedite and expand the progress of disputes for a limited period and it did. A backlog developed. But we were dealing with enlightened people and cooperative people.

Mr. SPRINGER. You are talking about the Third Division?

Mr. WOLFE. Of the Third Division. We met with the chief executives of those unions. Mr. Crotty is a president of one of the unions and we set up a supplemental board.

Now, that supplemental board is turning out as many awards as the permanent board and in a very short period of time we reduced that backlog from 2,800 to 1,900 and 600 of that 1,900 are in process of handling before other than that board. So actually, the backlog is 1,300 instead of 2,800 with the present output in a year and 3 months—with the present output, in a year and 3 months that backlog will be dissipated.

Mr. SPRINGER. Is there any possibility of getting any arrangement whereby the First Division could have the same kind of action?

Mr. WOLFE. We have done it with BLF & E, we are prepared to do it with the BRT and the other unions have no real problem—the other three. The other three divided among them is only about 900 disputes.

Mr. SPRINGER. Have you already entered into that arrangement or are you going to?

Mr. WOLFE. With the BLF & E we have entered it. With the BRT we are prepared to do it tomorrow.

Mr. SPRINGER. Let me ask you, is the BRT the only one you have not been able to get some kind of arrangement or they have not been able to get some kind of satisfactory arrangement?

Mr. WOLFE. We have not been able to work out anything with the BRT. The BLE is on record that it is perfectly satisfied. It is screening its cases. ORCB and SUNA are not in bad shape. If we work out this agreement for the Special Board on the Southern Pacific, 80 percent of all SUNA cases involve one railroad.

Mr. SPRINGER. How many?

Mr. WOLFE. Eighty percent.

Mr. SPRINGER. On the Southern Pacific?

Mr. WOLFE. Yes.

Mr. SPRINGER. BRT?

Mr. WOLFE. SUNA.

Mr. SPRINGER. Thank you, Mr. Chairman.

Mr. WILLIAMS. Did you have any questions, Mr. Devine?

Mr. Wolfe, the House is in session. We could not possibly go over 5 or 10 minutes more. I think this is a good time to break off.

Mr. WOLFE. Thank you very much.

Mr. WILLIAMS. You might mark your place.

Mr. SPRINGER. May I say, if you can boil down a lot of this, Mr. Wolfe, to what we are talking about here now, we would get a better understanding. I am a lawyer and as I read this I have one dickens of a time putting this all together as you read it, and this is some 28 pages that you are reading. You told me a lot here. I do not know what the other witnesses are going to say, but I found out where these cases are and if there is anything, I found out in which brotherhoods most of them reside. A great many of them happen to be in one railroad. I could not tell this by looking at this presentation. This does not analyze this for me. But if you can bring this down into a nutshell where the committee can get a picture of what you really mean, I think it will make it much easier for us. Your statement is very well prepared. I do not think anyone could prepare a better statement. It is awfully hard to be able to get the meat of the thing.

Mr. WOLFE. I will try as I proceed with my testimony, Mr. Springer, to make it just as clear as I possibly can. I realize this is a complicated thing, peculiar to one industry. The handling of such disputes has a background of tradition of almost a century and it is awfully hard to make it perfectly clear through testimony or otherwise, but I am certainly going to do the best I can to bring this thing right out in the open.

If remedial action is necessary, no one will welcome it more than the railroad industry.

Think of this: We may have a claim before this Adjustment Board that if sustained will cost the railroad a hundred dollars a day. Do you think that the operators of these railroads are so absolutely insane that they want to wait 10 years to find out whether they owe a million and a half dollars if they could find out in 30 days it would be $3,000? Who is the person that is going to suffer? It is the railroads. These delays are intolerable to the railroad industry.

Mr. WILLIAMS. The committee will stand adjourned until 2 o'clock this afternoon, contingent on our getting permission from the House to sit.

(Whereupon, at 11:15 a.m., the subcommittee recessed, to reconvene at 2 p.m. on the same day.)

AFTERNOON SESSION

Mr. STAGGERS. The committee will come to order.

Mr. Wolfe, you know where you stopped, so if you will start right in again. You go ahead and we will proceed.

Mr. WOLFE. May I proceed?

Mr. STAGGERS. You may proceed. I am hopeful we will get finished this evening.

STATEMENT OF J. E. WOLFE—Resumed

Mr. WOLFE. I do say, however, that the occasions on which a carrier has declined to comply with an Adjustment Board award have been rare, indeed, and that in most instances where an enforcement proceeding has been filed, the carriers' position has been vindicated and the award set aside.

I believe you will be interested in the information we have developed which indicates the relative infrequency of noncompliance by carriers with Adjustment Board awards. This information is tabulated in exhibit 1 to this statement. A few comments about the table are necessary to place it in proper perspective. The award numbers shown do not represent a random selection by my office nor was any other selection process used in the preparation of the table, except as I will indicate. As the footnote to the table shows, the award numbers were derived from two letters sent to me in my official capacity by Mr. G. E. Leighty in early 1963. Mr. Leighty is chairman of the Railway Labor Executives Association, an organization comprised of the chiefs of the standard railroad labor unions which represents their interests at a national level. The letters from Mr. Leighty, to which the table refers, enclosed official compilations by the railroad labor unions of all Adjustment Board awards which they asserted had not been complied with by the carriers.

We investigated each award cited in the compilations accompanying Mr. Leighty's letters, ascertaining whether or not the carrier had complied therewith and the current status of the award if there was noncompliance. The table attached to this statement is confined to First Division awards because this is the Division with the serious backlog problem and the one on which I expect most of the testimony before your subcommittee will focus. Similar information to that shown on the table is available for the other three Divisions. The table I believe is self-explanatory. It shows with respect to the carriers represented by the National Railway Labor Conference those awards with which the carriers did not comply and the present status of those awards.

A total of 14 awards are listed in the table, divided into 3 groups. The first award shown, No. 16558, was rendered on January 26, 1954, and although the carrier did not initially comply with the award a settlement was reached in April of the same year disposing of the case. Of the remaining 13 awards, 9 were the subject of enforcement proceedings in the Federal courts. These nine awards comprise the second

group of cases. Settlements were reached in three of the nine enforcement cases. In four of the remaining six enforcement cases, the carrier prevailed in court and two of those four cases have been concluded in the carriers' favor by denial of petition for writ of certiorari by the U.S. Supreme Court. One enforcement case is now pending before the Supreme Court and one before the U.S. court of appeals. Two enforcement cases have not yet reached trial in the U.S. district courts.

You will note there are four awards as to which enforcement proceedings have not been filed, these being shown in the third group. In two of these cases the carrier complied with those parts of the awards calling for reinstatement to active service of the claimants but disputes remain as to interpretation of those portions of the awards relating to backpay. In case No. 19286 the organization has resubmitted the dispute to the First Division of the Board seeking an order requiring the carrier to comply. In the fourth case in this group the carrier indicated its willingness to apply the award as rendered but served notice of cancellation of the local agreement on which the award was based, in accordance with the terms of the agreement.

Mr. WILLIAMS. I think it would be interesting at this point to know when these cases were instituted. Let us take the last cases, 19979 and 19980. Apparently the date of the award was July 21, 1961. When did that claim arise?

Mr. WOLFE. I don't know—you mean the date—the original presentation by the employees?

Mr. WILLIAMS. Yes.

Mr. WOLFE. I do not have that record before me.

Mr. WILLIAMS. Just wondering how long these cases had been pending before they were finally resolved?

Mr. WOLFE. I don't know, but we will be happy to supply that information if you wish it.

Mr. WILLIAMS. That appears to me to be one of the big problems that we are trying to resolve through this legislation. Whether this legislation is the right way to do it, as I said before, I do not know. But I think that is something that all of the committee recognizes is a problem, the length of time from the institution of the claim to the time it is finally resolved.

Mr. WOLFE. We will trace the history of each claim, that is, the date of its origination, the steps taken on the property, the property of the employing carrier, right up to the point of submission by the Board, rendition of the award and any steps that might have been subsequently taken.

Mr. WILLIAMS. All right.

(The information appears in Mr. Wolfe's additional statement, beginning on p. 248.)

Mr. WOLFE. The organization refused to honor the cancellation notice and a dispute still exists over the carrier's right to terminate the agreement.

The data shown on this table take on added significance when it is remembered that the table is derived from a list compiled by the organizations, not the carriers, and that this handful of first division awards with which the carriers did not comply is an infinitesimal number when compared to the thousands of awards rendered over the years by the first division of the board. Furthermore, the

table reveals that in all of the enforcement cases there shown that have been decided by the courts, the carriers have been found justified in refusing to apply the awards. The table demonstrates very clearly that the carriers have used restraint and judgment in deciding whether or not to comply with the particular awards. There can be no supportable claim of wholesale or indiscriminate noncompliance by the carriers, nor of imposition on the employees.

In summary, our position with respect to H.R. 704 is that it could only work an injustice upon the carriers, engender constitutional challenges as well as other litigation, and do injury to sections of the act which are shown to be functioning as intended.

Mr. WILLIAMS. Which specific sections of the act do you have reference to when you say they are shown to be functioning as intended?

Mr. WOLFE. I have reference, Mr. Williams, to those parts of the act dealing with procedures, protection of constitutional rights, and as I will point out later on in connection with the other two bills, jurisdictional controversies between the rival labor organizations, all of which form an integral part of this overall picture.

Mr. WILLIAMS. The thing that concerns me at this point, and makes me wonder if this act is operating as it was intended, is the fact that there is such a tremendous backlog of cases; also an average of some 7 or 8 years is required for each case to be processed and brought to a final conclusion.

Mr. WOLFE. Do you have reference, Mr. Congressman, to the first division?

Mr. WILLIAMS. First division, primarily.

Mr. WOLFE. Entirely, because the statement is not correct as to the other divisions.

Mr. WILLIAMS. In some cases it goes as high as 7 or 8 years on an average, and I believe that is in the first division.

Mr. WOLFE. On the first division, this is correct, and as I will point out later on and have mentioned earlier, those are things that can and should be taken care of and will be taken care of if there is cooperation. It will be taken care of if there is cooperation by the interested parties in an effort to make the act work as you correctly stated, as intended, rather than to obstruct its function.

Mr. WILLIAMS. All right, sir.

Mr. WOLFE. By the way, Mr. Chairman and members of the committee, you will observe that the list of unapplied awards that appears as an exhibit to my testimony does not include all of the awards listed by representatives of the unions.

We did not list those which were settled, which were disposed of. Neither did we list those involving the two railroads which we do not represent. That's the Southern system and Florida East Coast. Those are not listed because the information was not obtainable to us. Otherwise, the awards listed by representatives of the unions and those contained in my exhibit, I believe, were identical.

Mr. WILLIAMS. Would it change the picture any if the awards on those two railroads should be included?

Mr. WOLFE. It would change it slightly, but not to any great extent. Probably a total of 6 or 7 awards. That would be a distinction; yes, Mr. Congressman.

I now turn to the adjustment board backlog problem and H.R. 701 and 706, which are designed to effect its cure. The railroads are firmly opposed to both bills. If given a choice of the two, H.R. 706 is preferable, since it at least gives to a railroad as well as to an organization the privilege of initiating a special board of adjustment.

At this point, Mr. Chairman, and members of the committee, I want to emphasize one thing. The failure to agree on some boards of adjustment is not a disability that rests entirely upon either party. It is true, as has been asserted, that there are certain railroads under certain circumstances that have not agreed to the special boards.

On the other hand, there are many general chairmen of the unions who will not agree to special boards. In that respect, H.R. 706 is definitely preferable to 701; 701, if it has any remedial powers at all, would be frustrated, and its full effects could not possibly be secured if general chairmen continue to refuse to participate in such special boards.

This one-way street approach, where a general chairman could demand a special board and the employing carrier would be compelled as a matter of statute to so participate would not cure anything, if on other railroads, the general chairmen obstructed justice by refusing to agree to a special board. So in that respect, 706 would appear to be more equitable, more desirable, and more effective than 701.

Mr. DEVINE. That is, if you have to take care one of the two?

Mr. WOLFE. If the medicine has to be taken, regardless of how repulsive it might be to us or to others, why, that, of course, would be more palatable than the way that—than the one-way street approach which certainly could not be justified on any premise, and I will continue along that line.

However, I wish to make it clear that both bills contain the same objectionable provision; namely, mandatory special boards on all carriers at the request of the bargaining representative of each of the many crafts on each of those railroads. The expression of a preference between the two is merely a choice between two evils, one of which gives to us the same questionable privilege as it does to the unions.

At the outset, I emphasize that the railroads are here not in a spirit of antagonistic opposition but with the hope and expectation of assisting the subcommittee in examining and solving the backlog problem. We are, however, against H.R. 701 and 706, because they will not cure the patient. In my opinion, and I speak for all those I represent, passage of these two bills will materially worsen the backlog problem, create confusion throughout the industry and inevitably work against the public interest.

Immediately following I shall tell you why I have formed the above opinion about these bills. As stated, we are not here merely to criticize; therefore, after evaluating the special board bills I will give you our views on why there is a backlog and conclude with some suggestions as to what should be done about it.

I think you gentlemen have made it clear that that is exactly what you want me to do. It is easy to criticize, but criticism without some helpful suggestions as to the solution does not mean too much to you or to us.

I now offer more specific comments on H.R. 701 and 706, both of which would give the unions ostensible power to require creation of local

special boards of adjustment on every railroad simply by serving notice of their desire therefor.

To fully understand the consequences of these bills one must visualize the breadth and scope not only of our railroads but also the nature of railroad union representation as distinguished from that of most of the Nation's other industries. On the railroad side there are 102 class I line-haul carriers, 290 class II line-haul carriers, and 192 switching and terminal companies. All of the employees of these 584 individual operating railroads are represented by 34 craft unions, national in scope, and many other smaller organizations. Most of these labor organizations overlap each other in membership and continually wage war for the favor of the individual employee.

With that background in mind, these bills can be properly evaluated. On each railroad we have at least 22 separate statutory bargaining represenatives, to each of which the bills give the right of initiating their own private board of adjustment. Every such board would be a separate, independent entity with a neutral member as well as a carrier and union representative. Multiplying the 22 unions by the number of railroads affords some idea of the fantastic duplication of administrative machinery and effort inherent in the bills procedures, much of which would be at the public's expense. Imagine the magnitude of the task of simply finding thousands of competent neutrals to service these private boards, not to mention the public financial responsibility of paying them. The employees of no other industry are afforded such tribunals, but they may come looking to you if H.R. 701 and 706 should unhappily be written into law.

Mr. STAGGERS. Mr. Wolfe, is not this essentially the situation that was outlined this morning that now exists in the airline industry?

Mr. WOLFE. No, sir; it is not in the airlines. The litigating parties pay the bill.

Mr. STAGGERS. Yes, that is true.

Mr. WOLFE. They do not look to the taxpayer for these neutrals. They do it themselves. And I can't think of any better way——

Mr. STAGGERS. If we do pass one of these bills can we put that into the provision or not?

Mr. WOLFE. I certainly recommend it most highly. I think the success of the airline handling of the so-called minor grievances in primarily due to the fact that they have to pay their own bill. I think it would be impossible to find a better stimulant to collective bargaining, to the give-and-take procedure of collective bargaining than to say to those people, either settle it yourselves, or pay the neutral. These frivolous claims would disappear in thin air. It could conceivably have a very constructive effect in the minds of certain representatives of carriers who would prefer to have someone else assume their responsibilities.

Later on in this testimony I intend to make a definite recommendation that the Government has paid the bill too long.

Mr. STAGGERS. Just a moment there. Does not the railroad, though, now pay for their part for the members of the Board?

Mr. WOLFE. The railroads pay for their own representatives?

Mr. STAGGERS. Does not labor pay for their own representatives?

Mr. WOLFE. Yes, but the Government pays the neutrals.

Mr. STAGGERS. If you have to have one, you mean?

Mr. WOLFE. Yes, all expenses of the Board except the salaries of the partisan members.

Mr. STAGGERS. I want to pursue this just a minute here. All expenses of the Board when you do not have a neutral that they pay, the Government pays?

Mr. WOLFE. It pays the secretaries, stenographer, rent.

Mr. STAGGERS. That is set up by law, is that not right?

Mr. WOLFE. It is set up by law.

Mr. STAGGERS. It was set up by law?

Mr. WOLFE. That's correct.

Mr. STAGGERS. The airlines are operating under a certain section of the same bill?

Mr. WOLFE. A certain section, an independent, disassociated section, yes.

Mr. STAGGERS. All right.

Mr. WILLIAMS. I wanted to ask you, Mr. Wolfe, is there any practical reason why this system could not be revised to conform to the system employed by the airlines?

Mr. WOLFE. Well, there is——

Mr. WILLIAMS. I am trying to——

Mr. WOLFE. I beg your pardon.

Mr. WILLIAMS. I am trying to find the reasons why, in view of the apparent success that they have had in the airline industry, railroads could not pattern their claims adjustment machinery in the same fashion?

Mr. WOLFE. There is one thing that I think, Mr. Williams, that has been overlooked.

I have a note here on what we call a two and a half percent railroad—its operations are about two and a half of the overall. So to get the complete picture you have to multiply by 40.

Mr. STAGGERS. I do not follow you there.

Mr. WOLFE. I will make it clear because I want you to follow me. It is a two and a half—it is two and a half percent of the industry, the number of employees, mileage operated, and so forth. In other words, the other railroads comprise 97½ percent. This railroad had 75,000 claims submitted in 1964.

Now, practically all of those 75,000 claims were disposed of on the property. The railroad paid $97,777.70 in claims. The balance was withdrawn. So when people get a false idea that the railroads are not negotiating and disposing of claims, that is an erroneous impression. Hundreds of thousands of claims are disposed of in this industry every year. It is ony the hopeless case, where the people have a deep, pervading sense that they are right, or for political reasons which I will get into later—a general chairman will not withdraw the claim then. Those are the claims that go to the Board. Up to that point I think the record of the railroads is a very favorable record, an admirable record, compares favorably with any industry, including the airlines, that is, disposition of claims, short of the Adjustment Board procedure.

Now, as to the airline success and why I think these two bills, or either one of these bills would not be successful in the railroad industry.

As I understand the bills, it is the duly accredited bargaining agent who could ask for a special board. Now, this is so important that if I do not make it clear, I plead of you to ask questions until it is completely clear in your minds.

Mr. DEVINE. Will the gentleman yield?

Mr. WILLIAMS. Surely.

Mr. DEVINE. For the sake of clarity, Mr. Wolfe, I believe I quote you correctly when you said it is a hopeless case.

Mr. WOLFE. It is a hopeless case in the sense that they cannot be disposed of locally for one reason or the other.

You will recall, Mr. Congressman, I said political reasons and other reasons.

Mr. DEVINE. I did not want the record to show that they thought they might be necessarily wrong.

Mr. WOLFE. No; in the testimony of one of the previous witnesses, one of the witnesses conceded that 80 percent of the claims that go to the First Division will be denied because they are frivolous claims. I will refer to that just a little later on.

Mr. WILLIAMS. Before you get back to that question, let me pursue this just a little bit further.

Let's take the case of the frivolous claim. Because of political reasons or other reasons it cannot be settled on the property, and finally reaches the Adjustment Board.

Why is it not possible for the Adjustment Board to take a hard look at it and throw it out? Or perhaps, turn it over to a referee, if necessary, and let him throw it out instead of letting it drag on along for 7 or 8 years? That is one thing that is concerning me at the moment.

Mr. WOLFE. I am going to get into that, Mr. Williams. That question will be answered and will be answered very definitely. That is the question that keeps arising from time to time and it will be answered, but I particularly want to answer your question as to why these bills will not function successfully in the railroad industry.

Now, here is your answer. I am going to name specific unions. The Order of Railway Conductors and Brakemen is the duly accredited bargaining agent on railroad A. But 40 percent of the conductors on railroad A are affiliated with the Brotherhood of Railroad Trainmen. Of course, this is hypothetical, but nevertheless, circumstances just exactly similar to this are prevalent throughout this industry on practically all railroads. Now, the ORCB, the bargaining agent, could request a special board. The carriers would have a mandatory statutory obligation to agree under either of these bills.

That means that all the claims that the BRT is handling for their conductor members would have to go to the Adjustment Board because the BRT is not the statutory bargaining agent for conductors.

Now, the ORCB would get expeditious handling of its claims to the great disadvantage of the other organization. Every jurisdictional dispute could go right to a special board. The BRT would have no defense whatever. The BRT would not appear before that special board to protect its interests. Now, that is multiplied thousands of times.

The SUNA may have the bargaining rights for switchmen. But 40 percent of the switchmen on that property may be affiliated with the BRT. You find the same thing with the BLE and BLFE. That

is exactly what the BLE is opposed to—that is why they are opposed to this legislation. It would bring almost intolerable situations for certain organizations. There isn't any question about it.

If you, as the bargaining agent represented 51 percent of the craft and could get that sort of handling that the other union representative could not, the other union representing 49 percent of the same craft would be put at a disadvantage and keep in mind that the employing railroad is always in the middle. It would be impossible to have harmonious labor relations. It would be the worst thing I can think of.

Sometimes I wonder if the labor unions that have sponsored this thing really believe—really understand what it means.

Certainly the heads of the Brotherhood of Locomotive Engineers understands it and they want no part of it.

Mr. STAGGERS. You may proceed, Mr. Wolfe.

Mr. WOLFE. Now, gentlemen, aside from the sheer waste in duplicated effort, administrative machinery, and exorbitant costs you must not overlook the almost inevitable multiplicity of claims. On the National Railroad Adjustment Board we do have precedents which are administered nationally and which have been created over a 30-year period. These bills invite each general chairman of each of the 22 unions on each of the hundreds of railroads to overthrow those precedents and start afresh by filing every conceivable kind of claim which his constituents can conjure. Remember, each general chairman would have his own private board at Government expense right on the property.

Each general chairman also is susceptible to direct pressures from his men, and as a result he will usually file any kind of claim, regardless of how wild or frivolous it may be. Most national organizations now do some prescreening after receiving claims from their general chairman and before filing with the Adjustment Board. We say that most organizations don't presently do enough screening, but visualize if you will the tremendous flood of disputes at the fingertips of each general chairman which this legislation virtually encourages him to file. Vast numbers of new claims would unquestionably be added to the existing backlog, far outnumbering the number of cases filed annually with the NRAB.

I want to cite an example of that. Back in 1952 on the Southern Pacific they set up a special board at Government expense and the parties selected Judge Mayberry as the permanent neutral. That board in a matter of a few years handled close to 4,000 disputes. It was like playing the slot machines with wooden nickels. If you hit you got some money. If you missed, it didn't cost you anything but your general chairman's time. The availability of that sort of ad hoc justice simply created claims. There is nothing lost. If it was denied, you filed another one, you dropped another wooden nickel in the machine. Eventually you might hit the jackpot and it does not help. It is destructive and that is exactly what these things do.

Mr. STAGGERS. You, say might hit the jackpot. He would not get anything out of it, would he?

Mr. WOLFE. If the claim is sustained, he will.

Mr. STAGGERS. Would it not be for the man he is representing and not the general chairman himself?

Mr. WOLFE. Oh, certainly.

Mr. STAGGERS. It would not come to him—he would not get anything out of this, would he?

Mr. WOLFE. No; not ordinarily.

Mr. STAGGERS. His job would be to represent his men, would it not?

Mr. WOLFE. To handle every claim that is filed.

Mr. STAGGERS. I thought maybe by the words that you used the general chairman—that he was going to get all this money.

Mr. WOLFE. It is the claimant who is dropping the wooden nickels in, not the general chairman.

Mr. STAGGERS. It has to be the general chairman——

Mr. WOLFE. He files the claim, the general chairman files the claim, not the beneficiary.

Mr. STAGGERS. He has to be the instrument through which this is done.

Mr. WOLFE. That is correct.

Mr. STAGGERS. And he would not stand to get anything from it except——

Mr. WOLFE. Only a vote at the next election if he were successful in collecting claims.

Mr. WILLIAMS. Mr. Wolfe, I can understand the rationale of your example. Are you suggesting that these men may be a little bit less than honest in filing frivolous claims just in the hope that they might hit a jackpot?

Mr. WOLFE. No, I don't view it that way—I understand—I believe, and I understand human nature as well as you do. You file a claim—they think you might have a chance of getting it, and that is the way it goes. We are handling in this industry now several million claims a year.

Mr. WILLIAMS. Of course, to think that you might have a chance of getting it, that presumption would have to be based on some belief that the person had some equity in his claim. It is rather difficult for me to believe that there would be a number of frivolous—just absolutely frivolous cases to reach the division.

You know cases go into court quite often that are on the surface frivolous, but the person who files the suit thinks he has a claim and while they quite often lose those cases, whether it is on a preemptory or whether they get to the jury with it, at the same time there is a basic reason for filing this suit because they feel that they have a claim to some redress and would not the same principle apply here?

Mr. WOLFE. Well, according to the testimony of one of the witnesses for the unions, 80 percent of the claims now going to the adjustment board—they expect denial. That's in his transcript—the transcript of last year.

Mr. WILLIAMS. You do not recall which witness, do you?

Mr. WOLFE. Yes; it was Witness Johnson, volume II, page 197.

Mr. WILLIAMS. Is that Mr. Gene Johnson?

Mr. WOLFE. Yes, sir.

Mr. WILLIAMS. I wonder if he would mind advising us if that situtation prevails.

Mr. STAGGERS. I wonder if he would tell us.

Mr. WOLFE. I have no objection. I would like to finish my testimony.

Mr. STAGGERS. You may proceed and we will call him as a witness.

Mr. WOLFE. Thank you, Mr. Chairman.

This initial flood of disputes would continue to exceed present docketing because of a complete lack of uniformity of local board decisions from railroad to railroad. Because the employees of different railroads at many locations work in close proximity to each other, we have long thought that uniformity of decision was of value not only to management from a practical, administrative standpoint but also to the employees. These bills in operation would do serious damage to that principle.

This sheer weight of numbers not only in boards but also in disputes would in a short period lead to a virtual breakdown of grievance handling of far more serious import than the current backlog problem. Each of the unions on each of the carriers could create a board. Each board would have to be serviced by carrier and neutral personnel. The opportunity for filing large numbers of claims before each such board is not only present but would seem almost certain. Handling large dockets of cases before 22 boards presents problems of such magnitude that delay and inefficiency would almost certainly follow. For the smaller railroad the situation would immediately be acute. In short, each railroad could be choked by administrative duplication with large dockets of claims, all contributing to employee unrest and dissatisfaction.

A second major area of objection stems from the bills' failure to provide a method for resolving disagreements over the mechanics of forming each of these private boards. Imagine, if you will, each railroad having to sit down and write an agreement with each of its 22-some-odd craft representatives in order to get these boards into action. The bills do not, for example, specify how the boards shall conduct their proceedings; whether there shall be a transcript and if so who shall pay for it; will witnesses be permitted to testify and if so how many and which ones; and, most importantly, what is the jurisdiction of each board. In this respect, should each board have jurisdiction of all future claims from a given class or craft to the complete exclusion of the adjustment board, or, if not, what types of claims should it hear. These are not academic considerations but real ones, which have caused serious differences under existing procedures where the parties have voluntarily agreed to the creation of special boards. These bills compel them to, without directives or guidelines.

The point I am making is this: Carrier written statements explain how the public interest has been served by the present Railway Labor Act system of compulsory grievance arbitration, which as judicially construed forbids strikes over claims and grievances. Although such a system fosters and protects the interests of both employer and employee, organization heads have publicly expressed their dissatisfaction with it, since it deprives them of the strike weapon. This attitude is evident and is strongly expressed even through contract interpretations, i.e., minor disputes, not wage or rule major disputes, are involved. These union officials can be expected to continue to attempt to circumvent this restriction on the exercise of their economic strength. The instant bills, at the least, offer an opportunity for a new outbreak of strikes followed by a series of court decisions. Since the legislation does not authorize the courts or anyone else to write board-creat-

ing agreements for the parties, it is not fanciful thinking to envisage a wave of strikes unless the carriers agree to whatever provisions the unions demand.

Certainly to me the public interest would seem to be best served by working within the framework of existing legislation concerning which the question of striking over grievances is a settled issue.

There are a number of other deficiencies in the bills; however, I shall limit my comments at this time to one more. At the outset I briefly mentioned, in connection with the large number of craft unions in the industry, the problem of union rivalry. Conflicting interests and overlapping memberships between a union that is a bargaining representative and other unions that would like to become that representative would present a serious obstacle to the efficient and equitable handling of disputes under this legislation. Minority interests would for the most part be sacrificed, with serious consequences resulting to each railroad.

Several examples illustrate the point. This supplements what I said a few moments ago.

All five of the operating brotherhoods compete with at least one or more of the others. The Switchmen's Union of North America—SUNA and the Brotherhood of Railroad Trainmen—BRT—represent yard employees called yard foremen and switchmen. Only one of the two, however, is the representative of that class or craft on each railroad. When one is in the other is out. The out union, however, usually has a substantial membership and is continually trying to get in by calling for mediation board conducted elections. Under the present NRAB procedure each of the five unions has a permanent member on the first division of that board. It is that member's job to protect the interests of his constituency by arguing their claims before a referee. That philosophy would be changed, in fact, uprooted by these bills.

Note carefully that the bills give to the "representative of any craft or class of employees of such carrier" the right to demand and form a special board of adjustment. The handling of grievances is strictly by the statutory representative. In addition to possible legal objections, the minority union is sidetracked and its members' claims are thrown to the mercy of a rival competing union. If experience is any guide, such claims will receive little but lipservice. This, of course, would intensify the battle, aside from causing individual injustice, and place the carrier directly in the middle.

This problem is not a minor one. The Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen & Enginemen both seek the membership of engineers, although only one or the other is the engineers' craft representative on a given railroad.

I am not trying to minimize that. It is a problem and the time factor is a terribly disturbing thing and as I indicated in my testimony earlier today it is the railroads who suffer most of all, especially on these continuing claims which can reach astronomical figures, where the claim amounts to $200 or $300 a day and you have to wait to find out—wait for 10 years whether you owe it or not owe it. Right now these two unions are engaged in a violent battle, with few if any holds barred. In the same vein the BRT and Order of Railroad Conductors

& Brakemen—O.R.C. & B.—both represent road brakemen and road conductors.

The instant bills by forcing the submission of claims to private boards formed only by the union which currently happens to be the statutory representative would defeat individual minority interests, riddle the principle of equitable handling of claims and foster and foment more craft union rivalry and bitterness.

Gentlemen, I want you to understand that we sympathize with the motives of the sponsors of these bills, but we also felt it imperative to point out the pitfalls inherent in this approach—pitfalls, by the way, which seem apparent to those of us who have spent so many years in the railroad industry but which understandably are latent to others.

As I said before, the railroads are here to assist the subcommittee, for certainly the subcommittee is attempting to help us. In that respect I now address my remarks to the problem which caused these bills to be introduced. Why the backlog problem and what can be done about it?

While we acknowledge that the First Division backlog requires corrective action, in defense of the railroads and their handling of grievances it is not commonly known that hundreds of thousands of claims are disposed of on all of the railroads without any resort to referee procedure at all. Aside from the time factor, a backlog of 4,000 grievance disputes when considered in context with the size of the industry and the total number of claims filed is not really substantial.

Here again I want to say what I said about the Third Division. That docket is now down to 1,900 cases, 600 of which are now in the hands of special boards, they are disputes committees which we created as a result of negotiations with the executive heads of those organizations.

Mr. WILLIAMS. Mr. Wolfe, apparently you are putting the monkey on the back of one of these organizations. Which one?

Mr. WOLFE. Brotherhood of Railroad Trainmen.

Mr. WILLIAMS. In other words, boiling down your testimony thus far, you are saying that, in effect, most of the blame for the present condition of the First Division belongs to the BRT?

Mr. WOLFE. I would like to state it this way, if I may, Mr. Williams, that so far as the other four are concerned, we are taking care of that. If we have the same cooperation from the Brotherhood of Railroad Trainmen, we would work the backlog involving that organization out of the picture and it would not be necessary for me to be here before you today.

Mr. WILLIAMS. We have a backlog now of how many cases before the First Division?

Mr. WOLFE. Around 4,000.

Mr. WILLIAMS. Do you know how many are BRT cases?

Mr. WOLFE. I believe we said this morning 1,800—over 1,500.

Mr. WILLIAMS. That would be about one-third of the cases?

Mr. WOLFE. It is more than one-third. BRT backlog is roughly 40 percent. The BLFE was another organization that had about 1,200 and we set up a special panel and in a matter of 6 weeks those two men turned out 39 awards. On that basis it will not take them

too long to get the backlog completely out of the picture. The SUNA has roughly 400, 300 of which are on one railroad, the Southern Pacific. Those people are working for a special board. I think they are going to get it and if they do the total number of cases involving the SUNA will be around 100.

Mr. WILLIAMS. These 4,000 claims are pretty well divided among the various railroads?

Mr. WOLFE. Well, some of the railroads have more than others. There are certain railroads that do not have very many. Big railroads—I know the railroad which I was connected with for almost 40 years, we did not have many cases.

Mr. WILLIAMS. Which railroad would have the most cases of these 4,000?

Mr. WOLFE. We introduced a table last year that showed exactly what it was.

We made a proposition to the Brotherhood of Railroad Trainmen, and we selected 13, I believe, of the railroads that had a large number of dockets. Each 1 had over 25. And what we wanted to do was to take those cases down from the First Division and have them reviewed by representatives of the union and that individual railroad in an effort to take a second look and see if they couldn't dispose of it, with the further suggestion that the residue would be disposed of by a special board. I believe we took 15 railroads, and each 1 had 25 or more cases.

That is here some place. I have it by railroads and by unions.

This is the summary page by regions. There were 946 disputes from the East versus Southeast. Here is the B. & O. It had a total of 52 before the First Division.

The Central of Vermont, 37.

The Delaware & Hudson had 153 in the trainmen, for example, 1 union, and a relatively small railroad.

I am just going to do this at random, if you please, because it is——

Mr. WILLIAMS. Which one would have the biggest backlog of cases?

Mr. WOLFE. The Southern Railroad had the most of any.

Mr. WILLIAMS. How many cases?

Mr. WOLF. 272. I am pretty sure that is true.

That is correct. There wasn't any railroad that was even close to that.

Mr. WILLIAMS. Would those be cases growing out of the fireman controversy?

Mr. WOLFE. There were a few fireman cases, but that was relatively insignificant. I think those cases were submitted to the Division by the carrier, and I doubt if there were more than two or three. I can give you a breakdown.

Mr. WILLIAMS. All I was asking was an indication.

Mr. WOLFE. 137 firemen, 132 trainmen, 20 engineers, and 4 conductors. So you see, that—out of that 272—239 involved 2 unions.

So far as the SUNA, the engineers and the conductors, they were in pretty good shape.

Since we have the enviable record of the other three divisions of the Board to place alongside that of the first division and since most of the first division unions show signs of being willing to properly apply

existing legislation, the job of pinpointing the problem and prescribing a cure is not a difficult one.

Mr. Congressman, through your questions we have pretty well pinpointed the problem.

There are two basic causes of the first division backlog, both of which are well documented in the carrier written statements filed with the committee. I will leave examination of that documentation to your own private or staff study and confine myself to conclusions which I know from personal experience to be factual. First, the log-jam of first division cases is partly caused by the failure of the interested organizations to properly prescreen their cases before submitting them to the Board. For proof I think I need only point to the record.

For the past 5 to 10 years approximately 80 percent of the employees' claims have been denied. I have attached as exhibit 2 my letter of January 16, 1964, to Hon. Oren Harris, which on page 7 outlines the statistics in the above respect. Obviously, where the ratio of favorable verdicts is 1 out of 5, too many frivolous cases are being submitted. Further proof comes from the very recent experience of our newest supplemental first division board.

That is the one involving the B.L.F. & E. about which we have previously testified, which since its formation in March of this year has denied 80 percent of the claims disposed of. This supplemental board is doing its own screening, for all of these 39 cases were disposed of without a referee. I understand that the 1-to-5 ratio was even corroborated by a BRT witness at last year's hearings on these identical bills.

Mr. WILLIAMS. I hate to interrupt you.

Mr. WOLFE. That is all right, Mr. Williams.

Mr. WILLIAMS. I am trying to get a clear picture of this thing. You mentioned that you deal with five unions, I believe, in the first division. Does this relate to the overall number of employee claims which have been denied, the figure of 80 percent, or does that relate to BRT claims only?

Mr. WOLFE. No, that is for all.

Mr. WILLIAMS. Do you have a breakdown of the percentage of BRT claims which were denied compared to the percentage of the other unions' claims which were denied so that we have a picture of the comparable manner in which they were screened?

Mr. WOLFE. I would be happy to get it for you. It is available from our records. And with your permission I will have a note made that we will get it and furnish it to you.

Mr. WILLIAMS. You get the point that I am trying to make?

Mr. WOLFE. Yes, I do. You want to know what percentage of BRT claims were denied, sustained, or dismissed.

Mr. WILLIAMS. Let's assume for the sake of example that 90 percent of BRT claims were denied, and that 30 percent of another union's claims were denied, 50 percent of another union's claims were denied, and maybe 20 percent of another's. That would at least lend some credence to the statement that you have made that the BRT is the chief offender in the failure to screen properly the claims that they take to the board.

That was the reason for asking for that information. I think that would be very pertinent to our inquiry.

Mr. WOLFE. We would be very happy to give it to you. Of course, the results of screening become perceptible in two areas: one, the number of claims that reach the board; and two, the percentage of those that the referees denied.

So you have two approaches to that?

Mr. WILLIAMS. That is right. If you could give us a picture on that statistically I think it would be of value to the committee.

Mr. WOLFE. We can do it, and we will do it immediately.

Mr. WILLIAMS. All right, sir.

(The information requested appears in Mr. Wolfe's additional statement beginning on p. 248.)

Mr. WOLFE. Failure to prescreen cases, which causes overcrowded dockets and wastes public money can be cured in only one way: a conscientious, voluntary effort on the part of union officials to turn back those cases which are patently frivolous and without merit. Our experience is that a concentrated voluntary effort will not be made, largely because of the fear of union officers that their constituents will not approve of claimbusting at a higher level. Such fears are largely groundless, for more often than not the men themselves know which claims are plainly frivolous.

In the absence of this complete cure there is a legislative step which would discourage and I believe actually stop the filing of most frivolous claims. Under present NRAB procedures and even the proposed bills, the railroads and employee organizations are the beneficiaries of a situation which inures to no other industry group. I refer to the Government picking up the bills of the neutral arbitrators who determine these rail minor disputes. In every other industry that I know of the parties share these costs, and since the money comes out of their own pockets they are not particularly anxious to unnecessarily summon referees. This has an understandable tendency to keep the filing of frivolous claims at a minimum.

To keep the filing of frivolous claims to a minimum, thus reducing the NRAB case backlog, I recommend that section 3 of the Railway Labor Act be amended so as to require that referee fees and referee expenses be shared equally by the parties and that they no longer be paid by the Government through the National Mediation Board.

And I think as I testified earlier, that the success of the method of handling claims in the airline industry is largely attributable to the fact that the people get down there and try to dispose of these claims rather than incur the expense of bringing in a neutral.

The second cause of the first division backlog is the division's failure to work at its given task. This responsibility seems to fall mainly on one union, the BRT, and its former representative on the board, who recently retired. I suspect that this inaction is deliberate and it is that organization's intention and scheme to sabotage the first division, in fact, the entire NRAB structure, by creating a backlog. Complaints are lodged with Congressmen and others about the case jam. The brotherhood then actively supports the legislation that follows in the apparent hope that by some fortuitous circumstance it will change the 1-of-5 ratio of sustaining awards and regain its strike weapon over grievances.

That the backlog is largely attributable to the division's failure to dispose of cases is painfully obvious by the most cursory examination of the record. Exhibit E to Carrier Witness Burner's statement shows that in 1964 the first division disposed of 128 disputes. This compares with 261 for the second division and 897 for the regular and supplemental third divisions.

The statement of Carrier Witness Horsley outlines where the responsibility lies. It is basically with the BRT member of the first division. I can assure you that the carrier members of the division who are under the control of the committee of which I am chairman are ready for work every working day. They are anxious to handle a heavy caseload, but every effort they have made in that direction has been rebuffed. The efforts that my committee has made to get things moving have also been met with apathy by the BRT.

Mr. WILLIAMS. Mr. Wolfe, that statement seems to be rather critical of the BRT member of the first division. Who is that member?

Mr. WOLFE. I am not critical of the present member of the first division, Vice President Vanderhei. I am critical of the man who retired, as my statement indicates, Vice President Fern.

Mr. WILLIAMS. Your statment pinpointed it to an individual, and I thought we might as well find out his name.

Mr. WOLFE. That is perfectly all right, Mr. Congressman.

Something can be done, however. Correction can be accomplished voluntarily within the framework of existing legislation, or section 3 of the Railway Labor Act can be amended to cure the problem by reaching its cause. The solution is the creation of a supplemental first division to handle BRT disputes only. Such a board should remain in existence until the backlog is eliminated, and referee fees and expenses incurred by the board should be shared equally by the parties.

As to the appropriateness of this remedy, we need only look at the outstanding results already achieved by the Third Division of the board in reducing its backlog. As carrier witness Strunck relates in detail in his statement, the interested organizations and my committee met beginning in 1961 to study methods of reducing what at that time was a tremendous Third Division backlog. We finally decided upon three concurrent steps. First and foremost, by voluntary agreement assisted by the National Mediation Board, a supplemental Third Division was formed. It began functioning in 1962 and is presently turning out decisions at a rate that makes the First Division's production pale in comparison even though each has the same number of members. An average production of about 275 decisions for the years 1959 and 1960 went up to well over 800 for 1963 and 1964. A 2,731-case backlog on June 30, 1962, has been reduced to about 1,900 on April 30 of this year. We also agreed to change some board procedures and instituted a plan for shifting a number of related disputes from the division to carrier and union national disputes committee for decision. These efforts are paying off, as the figures show.

To give you a condensed view of what a supplemental division can do and also to compare its productivity with what the regular First Division has accomplished, I have had prepared a table showing productivity of the regular First Division and the regular and supplemental Third Divisions for the years 1962 through 1964. The table is marked as exhibit 3 and is attached to my statement. The First Divi-

sion on the average docketed 730 cases, decided 150 and had 246 withdrawn.

The First Division then disposed of about 400 cases per year but docketed 730. The Third Division for the same years had an average of 750 cases docketed but decided 742 and had 163 withdrawn. The First Division backlog since 1962 through the first 5 months of 1965 has increased by 474 cases, while for the same period the Third Division's has been reduced by 821. In addition, note that the Third Division has jurisdiction of far more employees than the First Division, in 1964 the figures being 293,000 for the Third Division and 190,000 for the First Division—a substantial difference.

And by the way, as I recall the testimony of the witness Johnson for the unions, he stated that if this backlog could be reduced and the First Division would turn out 65 awards a month, and I agree with him that that is something that they ought to do, that they could stay current.

So the real problem, then, is one of disposing of this present backlog. And if it could be done independently of the First Division, as we are doing with the B.L.F. & E., the problem is just automatically solved.

If we could take the rest of the 1,500 disputes involving the Brotherhood of Railroad Trainmen and give those disputes to a supplemental or expanded part of the Division, and let the present board handle the disputes being currently submitted, then the problem would just automatically disappear. And we are perfectly willing to do that.

Mr. WILLIAMS. Mr. Wolfe, that of course paints a very pretty picture. But aren't those supplemental boards made up in the same fashion as the First Division is made up; that is, the representatives of the carriers and the unions in equal numbers, and with the same procedures for submitting them to referees in case of a deadlock?

Mr. WOLFE. Yes——

Mr. WILLIAMS. The point I want to make clear is, why would it be reasonable to anticipate that a supplemental board would turn out more work than the existing board when it is made up the same day and under the same rules of procedure?

Mr. WOLFE. Well, the agreement we made, Mr. Williams, with the Brotherhood of Locomotive Firemen and Enginemen is that we took one man from the carrier and one man from that union, and we are turning over the backlog of B.L.F. & E. cases to these men with instructions to try to get rid of them, which have been our instructions all the way through, if you have to deadlock, then that has to be done when you find a dispute that you can't dispose of.

But so far as the procedure, it is the same.

But there you have only 2 men rather than 10. And I think that what we have done and the experience resulting therefrom gives us a reasonable cause to be optimistic as to the outcome.

But there is a true spirit of cooperation there. The people are making a very strong effort to correct this situation.

Mr. WILLIAMS. Do I understand that the men who will go on the supplemental board are more intent on getting rid of the backlog than the regular members of the First Division?

Mr. WOLFE. I wouldn't want to express it in that way. These two men have been given a mission, a job.

Mr. WILLIAMS. Of course, the members of the First Division have been given a mission, too, it seems to me.

Mr. WOLFE. Well what is your question, Mr. Williams?

Mr. WILLIAMS. Sir?

Mr. WOLFE. Do you have a question?

Mr. WILLIAMS. I am just trying to resolve in my own mind the reason why a supplemental board made up exactly in the same fashion, although it may have fewer members, could expedite business better than the regular First Division.

Mr. WOLFE. Well, I think it is reasonable to assume that where only 2 are dealing with the problem, dealing with the disposition of these cases, that the time element becomes shortened, it is less important, there is not the argument that you would have where 10 men are participating. These men can familiarize themselves with their particular cases involving their particular unions. And the result has been everything that we had hoped for and could reasonable expect.

Now, to pinpoint causes and results where the human equation is involved is sometimes difficult. But we do know that the supplemental boards, where they have been tried, have proved to be satisfactory and better than the permanent divisions.

I can make a long discourse about personalities and clashes that grow up that are perhaps present. But they are difficult to describe, and more difficult to prove.

Mr. WILLIAMS. Maybe we ought to abolish the First Division, then, and set up a series of supplemental boards.

Mr. WOLFE. If properly handled to protect the interest of the people, the public, the employees, and the carriers, it certainly is something that deserves consideration.

Mr. WILLIAMS. I am very glad that you have suggested some affirmative steps toward trying to resolve this problem.

Mr. WOLFE. And I am going to suggest some in regard particularly to 704.

Mr. WILLIAMS. And I think the committee should certainly give consideration to the suggestions.

Mr. WOLFE. We would appreciate it more than I can find words to express, because we recognized the seriousness of this several years ago. And we knew we had to do something. We just couldn't go along with it, it was too expensive for the railroads. Justice was not being done. You correctly assessed the whole thing when you said, if a man had to wait 10 years for justice, then the justice was certainly a little late in arriving.

That same thing applies to the railroad company.

Mr. STAGGERS. May I interrupt just a moment.

As I recall the testimony as given—and I don't remember who the witness was—he stated that a representative of the carriers had never voted for an employee since 1952, and that another employee who retired September 1, 1964, never had agreed to pay a claim from July 1952 to his retirement.

Mr. WOLFE. I don't know anything about that, it has never come to my attention.

Mr. STAGGERS. If this is true, then, don't you think that might have contributed to the backlog?

Mr. WOLFE. Certainly if a carrier member is not reaching an agreement to sustain a claim which is clearly sustainable, then that carrier member is not doing his duty.

Mr. STAGGERS. If this is true—and I am just trying to recall the evidence of yesterday—it looks like somebody has had a closed mind, because you would think one of these claims would be some good out of 12 years, you would think there should be one that would be good in 12 years.

Mr. WOLFE. I think that you are probably right. But I know that our carrier members are sustaining some claims. We have not checked the record of individual carrier members or individual union members to see whether they have sustained or denied claims. After all, in the final analysis it is the Board action.

Mr. STAGGERS. I am sure of that. But you were talking as if it were one sided. If this be true—and I say only if it be true—it looks as if someone has been blind or has not been listening or has the set purpose to do that. We are going to check into this, because I don't want this to go by, because there are two parties to it and two sides to every question. If this be true, I want to know, and I want to check on it thoroughly. And if it is true, there isn't just one side of it.

You may proceed, sir.

Mr. WILLIAMS. What percentage of cases, Mr. Wolfe, require a referee?

Mr. WOLFE. Oh, it is a very heavy percentage, Mr. Williams. I would say 90 percent, and perhaps even more.

Mr. WILLIAMS. That would indicate to me that there might be some pretty arbitrary people on both sides.

Mr. WOLFE. Well, as I stated, I doubt that more than 1 or 2 percent of the disputes that arise ever reach the National Railroad Adjustment Board.

Mr. WILLIAMS. I understand that. But once they reach the Board, they find themselves unable to settle about 90 percent of the cases without sending them to a neutral party.

Mr. WOLFE. This is a question that I have considered for years.

Mr. WILLIAMS. I don't know how to get them to do it.

Mr. WOLFE. Mr. Williams, the 1926 act, I believe, created special boards of adjustment, or permitted their creation, regional boards. The boards were composed of an equal number of partisan representatives. They all had the authority of the present National Railroad Adjustment Board. But there was no method in the law for breaking deadlocks.

Now, the same type of people were on those boards as are on the boards today, practical railroad men and union officers, all of whom were practical railroad men, and most of them, all of them whom I know, have had a background of railroad experience. There are two sets of people, both of whom except for accidents, perhaps, might have been on the other side of the table.

The union men are intelligent, ambitious, hard working men. Had they chosen to follow the other ladder of promotion and be railroad officers, undoubtedly most of them would have been. On the other hand, these carrier representatives, had they chosen to aline themselves with the unions and worked for advancement, undoubtedly

many of those would have been union officers. So there are two groups of people who are much alike. And there is a very definite mutuality of interest between the two. Yet they couldn't settle these disputes. The result was a tremendous backlog, thousands of disputes that were not decided, and there was no way of deciding them.

So the union sought the amendment which the Congress passed in 1934.

Now, the purpose of that amendment was to bring about a finality through the selection of referees, to do what the partisan members had proved they were not capable of doing throughout the years.

With that explanation you can understand that the 1934 amendment actually presupposed that resort to the use of referees was the method of correcting the vacuum in the original enactment. That was the purpose of it.

So when we talk about the large number of referee cases, we must look at the background, because the background shows that the amendment of 1934 was to accomplish that very thing.

Mr. WILLIAMS. I presume that the board members go on record as to how they vote on these individual cases, is that right?

Mr. WOLFE. No, I don't believe they do.

Mr. WILLIAMS. Is it by Australian ballot, nobody knows how any particular member may have voted on any particular issue?

Mr. WOLFE. I think as a practical matter five members voted "yes" and five members voted "no."

Mr. WILLIAMS. There is no way to pin a member down as to how he may have voted on a claim?

Mr. WOLFE. I don't know of any.

Mr. WILLIAMS. On the assumption that a carrier member would cross the line and vote with the unions, or the union member would cross the line and vote with the carriers on a particular issue, there would still be a deadlock?

Mr. WOLFE. If there is one that votes against denying a claim, then there is a deadlock. I haven't heard in years of a 6-to-4 vote.

Do I make that clear?

Mr. WILLIAMS. You certainly do.

Mr. WOLFE. Brutally so.

Mr. WILLIAMS. As Mr. Staggers said, it works the opposite way too, you know.

Mr. WOLFE. Absolutely. There is no question about it.

Mr. STAGGERS. That is what we are here today to try to resolve. We want to get your views and the views of the others and come to a decision.

Mr. WOLFE. I am as frank as a witness can be.

Mr. WILLIAMS. I have found that in the House when members vote off the record they usually vote their consciences; on the record they follow their political consciences which might be a different vote. And the thought occurred to me that if this were done by Australian ballot there might be times when some conscientious member would believe a claim was justified, or a union member would feel that a claim was not justified, and he would so vote, if there were no way to pin him down on it. He wouldn't have to account to his constituents on the way he voted on that particular item.

I simply brought that up wondering if that possibility had been explored.

Mr. WOLFE. It hadn't been explored by me. It certainly presents some interesting things to reflect on. And I can assure you, Mr. Congressman, that it presents some interesting things for the unions to consider.

Mr. STAGGERS. You may proceed, sir. And we hope that you can get through with your statement. And then we will have some other questions.

Mr. WOLFE. Since the supplemental board procedure has worked so well on the Third Division you are undoubtedly curious about our efforts, if any, to obtain the same results on the First Division. Efforts have been made with some good results but not enough to solve the problem.

Most of this testimony I have already given you as a result of questions, and so forth. I will run hurriedly through it, because I think practically all of this I have already talked about.

I think that I have talked about our efforts to bring about cooperation, to dispose of the BRT cases, I think I have covered that very thoroughly.

I want to go back to what I previously stated in regard to specific recommendations.

No. 1, I think that if the Railway Labor Act were amended so as to put the railroad industry and the unions who represent employees in the same posture with respect to paying the bill to dispose of their own disputes, that would be helpful.

I think it would have a constructive effect on the handling of disputes at the lower levels.

I am convinced, and this I firmly believe, that the constructive effect would be superimposed upon both parties, representatives of both parties.

Claims that cost up to $250 to dispose of and which perhaps involve $5 or $10 would rarely ever find their way to a neutral. The parties would diligently and sincerely endeavor to dispose of their disputes, and they would be disposed of.

I know of no reason why the taxpayer should assume the burden of financing what I consider to be wasteful practices. If the parties had to pay their own bill, most of these disputes would be disposed of locally, and representatives of each of the parties would assume the responsibilities that they ought to assume.

And I speak now of both parties. If I am handling a claim on the railroad, and that claim is one that is supported by the collective agreement, it ought to be paid. If the union representative is handling a claim that is no good, it ought to be withdrawn.

The public should not be burdened with handling political situations or protecting people who are incapable of assuming their own responsibilities. That is what we have now.

Now, I am going to something that is a very sensitive area. And that is the one that is covered by this H.R. 704, the question of judicial review of awards rendered by the National Railroad Adjustment Board.

Now, we think very strongly——

Mr. WILLIAMS. Those are monetary awards you are referring to?

Mr. WOLFE. Yes.

We think very strongly that there isn't anything particularly wrong with the act in its present state. We think that we have proved conclusively and that there has been no real abuse. When you consider the small number of awards which the unions had to seek enforcement of through judicial procedures as compared to the thousands and thousands of awards that have been rendered, I think every fair minded person will agree that the carriers have acted with restraint and discretion.

On the other hand, one of the principal arguments is that if an employee's claim is denied, then there is positive finality.

Now, as to the constitutional question, we believe that we are correct in the opinions we have formed, the conclusions we have reached respecting that paragraph, but if this committee and the Congress decides that there is an inequity existing here, and in your wisdom you should decide that both sides would have the right of judicial review, I think the carriers would be forced to accept.

Much has been said about the cost of handling these cases when judicial review is resorted to.

Now, the present law reads, section 3. First (p), 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 in the court of the United States. If the petitioner shall finally prevail, he shall be allowed a reasonable attorney fee, to be taxed and collected as a part of the costs of the suit.

Thus the Congress has provided for the most substantial part of the cost where enforcement proceedings are resorted to, so far as the railroads are concerned, if this committee believes that there is an inequity and the committee should recommend that the act be amended so as to permit judicial review by either party, either where it is a denial of the claim of the union or such claim is sustained, why we see nothing wrong with that.

But if the committee believes that the carrier should not have the right to go to court where we think we have not had due process, and that tremendous sums of money are extorted by young college professors, whomever they may be, then we would oppose that, oppose it just as far as we possibly could. And I am certain that many lawsuits, many court cases would result.

But we do want to be fair about it.

Mr. STAGGERS. How do you mean many court cases would be avoided?

Mr. WOLFE. Well, we are certain that where a $1 million or more—and there have been awards involving that much money, I remember one where just the capital expenditures necessary to reconstruct the physical property to permit handling of the business in the event a claim was sustained amounted to more than $15 million.

Mr. STAGGERS. I cannot conceive of any such claim as that. But if it were justified it should have been paid.

Mr. WOLFE. It wasn't. The board denied it.

I can explain the case to you if you are interested.

Mr. STAGGERS. You don't need to

Mr. WOLFE. I didn't think you would want to hear it. It still shocks me when I think about it.

That is all I have, gentlemen.

Mr. STAGGERS. I would like to ask one or two questions.

I would like to know approximately how many special boards there are currently in operation in the industry. Do you have any idea?

Mr. WOLFE. Yes; I think I have it here, Mr. Chairman.

Involving the operating brotherhoods or the unions?

Mr. STAGGERS. All of them, I would say.

Mr. WOLFE. Mr. Chairman, it is extremely difficult to say how many are actually functioning. This statement is prepared on the basis of the year in which the Board was created. Some of them have completed their functions and are discontinued. Others are still in existtence. But I will say this, that since 1952 there have been 609 such special boards. These boards have disposed of 37,828 disputes.

Mr. Chairman and Congressman Williams, that is exhibit G annexed to the testimony of the witness Burner.

Mr. STAGGERS. In regard to that I would like to ask this further question. Do these special boards, then, presently disrupt the operation of the act in anyway?

Mr. WOLFE. Oh, no; they are by agreement. And the disputes that are referred to those boards are agreed to. And jurisdictional disputes, that is, disputes that could conceivably involve more than one organization, the carrier would just not agree to submit that type of dispute to a special board of adjustment.

Mr. STAGGERS. What I meant to say in my statement was, these boards sometimes deliver decisions which are inconsistent with the decisions of the constituted board?

Mr. WOLFE. Yes; occasionally they do.

Mr. STAGGERS. That was the full question that I wanted to ask, if they did.

I assume H.R. 701 and 706 would have no particular effect on any carrier which had special boards already in existence, is that correct?

Mr. WOLFE. Oh, yes. Because there are no carriers that I know of right now that have special boards involving all of the unions. The railroad might have a special board involving one union, but no other. And most of the special boards are created by agreement to handle a number of cases that the union and the carrier have agreed will be submitted to that board. And when these disputes are disposed of the board ceases to exist.

Now, there are some such agreements that provide for the particular disputes that are listed and made a part of the agreement, and others that may be added to that document during the life of the board. The only continuing board, I recall, was the Southern Pacific Board, of which Judge Mabry was the permanent member until he finally died. That board handled several thousand disputes.

Mr. STAGGERS. My question was, If these boards are now in operation to take up most of these questions, it would have no particular effect on that carrier, would it, if these boards are already in existence? I am assuming that they are now, since we say that there are 598 of these boards that are constituted, we don't know how many have gone out of existence.

Mr. WOLFE. I don't know how many are in existence now, I have no idea.

Mr. STAGGERS. Assuming that a substantial portion of this group is still in existence.

Mr. WOLFE. That would be an erroneous assumption. I doubt if 5 percent are still in existence.

Mr. STAGGERS. You feel, then, that from this 598 we might have 20 or 25 boards still in existence?

Mr. WOLFE. There could be that many. There might be a few more, but there are not a great deal more.

Mr. STAGGERS. Just 25?

Mr. WOLFE. I would say somewhere in that vicinity.

Mr. STAGGERS. Any further questions?

Mr. WILLIAMS. No.

Mr. Chairman, I would like to ask you if this concludes the hearings.

Mr. STAGGERS. No, it does not.

Mr. WILLIAMS. Before we wrap these hearings up, I would like to make an observation, and then make a suggestion.

I think both sides to the controversy agree that an extremely bad situation exists in the first division. Each side to the controversy puts the blame completely on the other side.

Mr. Wolfe, you have given us an excellent statement in support of the carriers' position. And you have raised some questions that, quite frankly, I think need to be carefully explored by the subcommittee.

The brotherhoods, the unions, have suggested certain remedies which are incorporated in these three bills, to which you take exception, and not without reason.

On the other hand, you have suggested that in lieu of the remedies included in these three bills, that we amend section 3 so as to require that the expense of the referees be shared equally by both management and labor.

Secondly, you have suggested the creation of a supplemental first division to handle exclusively BRT cases, with the fees and expenses shared equally by the parties.

And in case the Brotherhood of Railroad Trainmen are not willing to work out the creation of a supplemental board, you have suggested that the committee might consider amending section 3 so as to create a supplemental board and dispose of that backlog of cases.

You have indicated, if I understood you correctly, that you didn't feel that the carriers would have any serious objection to the Congress giving the employees the right to appeal to the courts when they suffer adverse decisions on monetary awards.

I am not certain what the correct remedy is for this situation. But, like you, and like the brotherhoods, I recognize that a very bad situation exists that needs correcting.

And in view of the suggested alternatives in which you have given to the committee, I feel that it might be well for the committee to explore the viewpoints of the brotherhoods with respect to these suggestions before we close out these hearings, Mr. Chairman.

Mr. STAGGERS. Mr. Williams, I meant to do that, because you had requested that we hear from Mr. Johnson in rebuttal to this session

here, and I thought that we would do that before we closed the hearings.

Mr. WILLIAMS. I am not suggesting rebuttal so much as clarification.

Mr. STAGGERS. Clarification.

Mr. WILLIAMS. I would like to get their ideas as to this suggestion that you have made Mr. Wolfe, because if this can be done—if the remedies you have suggested provide a better answer, I am ready to consider it. I am not wedded to the bills that I introduced. I am not sure whether your suggestions are preferable to the others or not. I have not heard yours discussed by the other side. I would like to hear from them on this. And I would like to hear some of their remarks concerning some of the allegations that have been made in your statement.

Mr. WOLFE. May I say something, Mr. Chairman.

Mr. STAGGERS. You may.

Mr. WOLFE. As to your recitation of the things that I have suggested, I want to say that you spoke with clarity, with definite precision, and you were absolutely correct in every respect respecting the suggestions I have made. For that I am grateful.

Mr. WILLIAMS. You put them rather precisely.

Mr. STAGGERS. They are a matter of record, and they can be read in the record as to what you have said and how he has interpreted them. That is for sure.

Mr. WOLFE. Thank you, sir.

Mr. STAGGERS. At this time I would like to submit for the record a letter from the Brotherhood of Locomotive Engineers by the Grand Chief Engineer, P. S. Heath.

(The letter referred to is as follows:)

BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
Cleveland, Ohio., June 4, 1965.

HON. HARLEY O. STAGGERS,
Chairman, Subcommittee on Transportation and Aeronautics, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: May I take this opportunity to direct your honorable committee's attention to a proposed modification of the Railway Labor Act, as amended, that will further amend such act if the proposal contained in H.R. 701 and H.R. 706 is approved by the present Congress. The present Railway Labor Act provides for the certification of the authorized and accredited representatives of the various crafts or classes of employees in the railroad industry covered by the act.

As grand chief engineer, I am the chief executive officer of the Brotherhood of Locomotive Engineers, the organization that has been certified and recognized by the National Mediation Board, a tribunal established under the act, as the collective bargaining agent for locomotive engineers on the overwhelming majority of railway systems in the United States and Canada.

The proposal contained in H.R. 707 and H.R. 706 would guarantee the right of the representative of a craft or class of employees, within the industry, to obtain the appointment of a special board of adjustment, by submitting a request in writing, to hear and adjudicate disputes that are now referable to the National Railroad Adjustment Board. Such a proposal is incongruous with and completely nullifies the intent and purpose of that portion of the Railway Labor Act which established the NRAB. The duties and responsibilities of the NRAB have been universally identified and supported by Supreme Court decisions.

This NRAB has jurisdiction over cases of a minor nature such as, but not entirely limited to, time claims and interpretations of existing contractual schedule agreements. In this respect, it might be well to call your attention to the

ruling of our Supreme Cour, in the *Chicago River* case, wherein the Court ruled that disputes of a minor degree must be submitted to the NRAB for adjudication instead of permitting an organization to depend upon an exercise of its economic strength to force a satisfactory disposition. The present act further provides that the NRAB's deciisons are final and binding upon the parties to a dispute.

If the proposal now embodied in H.R. 701 and H.R. 706 were to be approved the special boards of adjustment thus provided for would bring nothing but confusion to the industry. We would then be confronted by decisions from two separate tribunals, both authorized to render binding decisions in identical disputes.

Nothing could be more conclusive relative to the confusion that could result than to recall the condition within the railroad industry prior to the adoption of the Railway Labor Act when regional train service boards of adjustment rendered decisions in numerous disputes involving the organizations and railroads in various parts of the country. Decisions diametrically opposite to each other were rendered by these various regional boards with the result that disputes involving identical facts, circumstances and contractual rules were disposed of entirely in different manner. This caused utter confusion within the industry in an effort to obtain uniform interpretations of identical contractual rules.

A classic example of such confusion herein referred to resulted in an award rendered recently by the NRAB involving a dispute between the Denver and Rio Grande Western Railroad and one of its operating organizations and an award rendered by a special board of adjustment involving the same parties over an identical situation wherein the facts, circumstances and rules were identical; yet the decisions of these two tribunals were diametrically opposite. In the one case the employees' position was sustained, while in the other the referee rendered a denial award. (See NRAB Award 19389.) (See Special Board No. 12–BRT.)

Under the present act, any one of the organizations within the industry may submit a dispute to the NRAB for adjudication involving one of the members of that organization. The particular organization that submits such a dispute is at present represented on the NRAB. However, under the proposed modification of the act should the representative of the craft or class in which the claimant was employed request a special board of adjustment be established for the purpose of resolving such a dispute, the claimant's representative would not be permitted to be a member of such board unless he were a member of the same organization as the representative of the organization requesting the special board of adjustment.

This would have the effect of forcing upon all the employees a closed shop whereby the employee must belong to the particular organization holding the collective bargaining rights, or else said employees would be deprived a representative of their choice being a representative on the proposed special boards of adjustment now proposed.

The present provisions, as encompassed within the Railway Labor Act, for the adjudicating of disputes are entirely adequate with the possible exception of a break down in the mechanics of the NRAB itself. Here, possibly, a closer screening of cases docketed for decisions could be effected and, in this respect, I might point out that the Brotherhood of Locomotive Engineers have approximately 100 cases on the docket awaiting adjudication, which is not at all unusual or unrealistic.

I submit that if the present Railway Labor Act as it concerns the provisions for the adjudication of disputes is not further modified, except to the extent that any award rendered by the NRAB be made final and binding and that such award must be immediately applied without reservation, then both the industry and the interested organizations will have obtained a desired avenue for the resolution of much of their present problems.

For the reasons above detailed, I would very much appreciate if you will arrange to insert this letter into the record as an indication that the Brotherhood of Locomotive Engineers opposes passage of H.R. 701 and H.R. 706.

Very truly yours,

P. S. HEATH,
Grand Chief Engineer.

Mr. STAGGERS. The committee will adjourn until the call of the Chair at a future meeting to hear further testimony. And I think that probably will take 1 day. And we will, I assume, have both——

Mr. WILLIAMS. It might be well to have both the brotherhoods and Mr. Wolfe.

Mr. STAGGERS. I was thinking of that.

We will adjourn now until the call of the Chair at some future date, and we hope that will be in the next week.

The committee is adjourned.

(Whereupon, at 4:15 p.m. the subcommittee adjourned subject to the call of the Chair.)

RAILWAY LABOR ACT AMENDMENTS RELATING TO NRAB

TUESDAY, JUNE 15, 1965

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS OF
THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2218, Rayburn House Office Building, Hon. Harley O. Staggers (chairman of the subcommittee) presiding.

Mr. STAGGERS. The subcommittee will come to order. We are resuming hearings on the bills H.R. 701, H.R. 704, and H.R. 706, and at this time we have listed here as the witness Mr. J. E. Wolfe, but I understand he is not here, and will not be here, and someone else will take his place, so if you gentlemen who are to represent him will come forward, you can proceed at this time.

Mr. HOPKINS. It was not our understanding, Mr. Chairman, Mr. Wolfe was to testify today. The way it was left according to our understanding——

Mr. STAGGERS. Will you come forward?

Mr. HOPKINS. The way it was left, according to our understanding, was that the representatives of the brotherhood organizations were to appear today and express their views as to those matters, those recommendations made by Mr. Wolfe last week, and not that Mr. Wolfe or any representative of the carriers was to appear and testify, except as the occasion might require, depending on what is said by the organizations.

Mr. STAGGERS. My understanding was that both sides should have an opportunity, but if you people do not wish to, that is perfectly all right.

Mr. WOLFE. Not at this point, Mr. Chairman. We finished our testimony at the conclusion of the last session, and we might wish to respond to whatever the organizations have to say about the recommendations we make, with your permission, of course.

Mr. STAGGERS. The understanding was—well, I did not arrange this list, the clerk did, and had Mr. Wolfe first on the list, so if you don't wish to testify at this time, we will ask Gene R. Johnson, then, the next man on the list, to come forward and testify.

Is Mr. Johnson here?

Mr. CHESSER. Mr. Johnson is with me, Mr. Chairman. I will have Mr. Johnson with me for our testimony.

Mr. STAGGERS. I see. There are two of you. Come right on forward. Mr. Chesser, give your name, and state your connections, and so forth, in the record, and you may proceed.

49-996—65——15

STATEMENT OF AL H. CHESSER, NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF RAILWAY TRAINMEN; ACCOMPANIED BY GENE R. JOHNSON, EXECUTIVE ASSISTANT TO THE BROTHERHOOD OF RAILROAD TRAINMEN'S REPRESENTATIVE TO THE NATIONAL RAILROAD ADJUSTMENT BOARD—Resumed

Mr. CHESSER. If I am correct in the proceedings of the committee, as I have heretofore, we would not go on here as the carriers have indicated, and burden this committee by one testifying and then the other all morning, surely.

Mr. STAGGERS. No; we are not going to do that. As I said, there was some question. The committee actually had closed and should have been, but there was some request about one point, and there was not time for it, then, so it was decided that if we were going to come back, we would have both sides. But I think we have heard the testimony, enough to make up our minds on, so you may proceed.

Mr. CHESSER. Yes, sir. Mr. Chairman, it appears that in the prepared statement that has been furnished the committee, page 6 has been omitted. We will furnish it to the committee. I did not notice that until right now. My original statement does have it.

Mr. JOHNSON. You may find it behind page 7. Two of these pages were just out of order, in mine.

Mr. STAGGERS. Well, I might state to all of you that if any of you wants to put these things in the record and summarize your statement, we would be glad to have it that way, and we almost must because of time. We will have to close this hearing today, but we wanted each person that desires, to have an opportunity. So you may proceed Mr. Chesser.

Mr. CHESSER. Mr. Chairman and members of the subcommittee. My name is Al H. Chesser. I am the national legislative representative of the Brotherhood of Railroad Trainmen, which is one of the organizations associated with the Railway Labor Executive's Association. I appeared before you June 8 to testify on behalf of our organization and the Railway Labor Executves' Association in support of H.R. 701 and H.R. 704 by Congressman John Bell Williams, Democrat of Mississippi. I have returned today at your request to state our views and opinions concerning the position of the carriers as stated by their witness who testified June 9.

The matters to be covered are of deep concern to our organization as well as to our related brotherhoods, and I feel it is necessary to call evidence in our exhibits, which are on file with the subcommittee, to your particular attention. This will be done as briefly as is consistent with our need to clear the reputation of the organizations and convince you of the groundless nature of the vicious attack which was made upon us.

Those exhibits, Mr. Chairman, were handed to our committee and there were a great many of them, and we did not burden you at that time by reading those exhibits, only furnished them to you, you will recall.

Taking first things first is generally a good way to do business. Then you will recall the statement made by the carrier witness in which he alleged that our witness, Mr. Johnson, had testified before

your committee in the 1964 hearings that approximately 80 percent of the claims submitted to the First Division are denied and that this should be taken as tantamount to an admission that 80 percent of them are no good in the first place.

The exact testimony of our witness was not quoted but it is a matter of record. So are the percentage figures on how the First Division has disposed of cases down through the years. A witness who testifies to a fact like this, acknowledging that the record shows a certain percentage of claims which have been submitted have been denied in the past does not mean that the same percentage of cases now pending before the board, are no good. Mr. Johnson is available if the members wish to question him.

Next. I must emphatically deny the many broad statements by the carrier witness which, if believed by you, would stamp the Brotherhood of Railroad Trainmen as the main, if not the only cause for the backlog of cases on the First Division and that a lack of cooperation on the part of our members here, during the years from July 1952 through December 1964 was responsible for much of this. You will remember that there were strong statements made by the witness and they are in the record, so rather than deal with each one specifically, I think I can make my position clear by briefly presenting the evidence which completely refutes what the witness said.

At the time I made by statement on June 8, I filed 18 exhibits, captioned "Supporting Data Used in Connection With Statement of Mr. Al H. Chesser." The first 11 of our exhibits are a record of the efforts of the brotherhoods represented on the First Division, to persuade the railroad managements to join us in correcting conditions there. They show that the Division was in just about the same sorry shape in July 1937, which is just 3 years after it started work, as it is today, and that these same intolerable conditions have kept the industry in a turmoil practically all the time since then. They show that all five of the operating brotherhoods and not just the Brotherhood of Railroad Trainmen, took part in the handling and were equally concerned in trying to improve the situation. They show that the main reason for all of this down through the years has not been an uncooperative spirit by any one organization, but industrywide refusal of the carriers to follow precedent established by awards of the Adjustment Board in the first place, and, running a close second, a general refusal to have issues involving many individual time claims decided by one so-called test case.

This attitude on the part of the carriers was compelling representatives of all organizations, not just one, to file all individual time claims with the board instead of just the one, even though this means the board would then have to render awards like a string of sausages, with the same findings.

Everyone concerned, including the Government, could have saved a great deal of time and money by the sensible process of holding other similar claims on the property while one case was sent to the division, with the understanding that the decision given would apply to the rest of them. Our exhibits show the carriers countered our efforts to improve conditions by demanding certain changes in the procedures of handling cases on the First Division which would have only slowed things down worse than ever and after almost continuous

meetings and correspondence from 1937, we have never made any real headway.

Mr. FRIEDEL. Mr. Chairman.

Mr. STAGGERS. Mr. Friedel.

Mr. FRIEDEL. I just wanted to ask a question. This seems to be a very broad statement, where you say that—

> our exhibits show the carrier countered our efforts to improve conditions by demanding certain changes in the procedures of handling cases on the First Division which would have only slowed things down worse than ever after almost continuous meetings and correspondence from 1937.

Can you go into more detail on that? Where they slowed it down and made it worse?

Mr. CHESSER. Yes, Mr. Friedel. I have asked Mr. Johnson to elaborate on that, as he is our representative on the First Division. Mr. Johnson.

Mr. JOHNSON. Mr. Friedel, we have that covered in one of our exhibits. If you will permit me just a moment, I will refer to it, where down through the years, as we tried to reach an agreement with the representatives of the railroad to improve conditions on the division, they responded by demanding certain changes in the procedures on the division, in the handling of cases. One of these, for example, was that the division permitted the representatives of the railroads to appear and argue cases before referees. They also——

Mr. FRIEDEL. What is wrong about that? Wouldn't they have a right to appear and argue why they think it is not justified, what ever it may be?

Mr. JOHNSON. Under the procedures on the First Division, appearances before referees are limited to the members of the division themselves. And oral arguments, I mean—pardon me. When we have oral hearings, one a year in November, parties may appear before the members of the division through their representatives, and discuss their cases, but if the division deadlocks, and these cases go to a referee, our rules of procedure do not permit other than the members of the division themselves to appear before the referees.

The carriers could have, if such a change were made, had counsel appear, in addition to their member on the First Division, and argue cases before the referees, and this would have meant, as far as we were concerned, at least, duplication of the oral argument in each case.

Mr. FRIEDEL. Let me follow you here. We are trying to clear up the backlog in the First Division. That is the main purpose. Is that right?

Mr. JOHNSON. Yes, sir.

Mr. FRIEDEL. Now what is the procedure? You file a complaint with the First Division and they hear the oral arguments?

Mr. JOHNSON. No, sir. Under our procedures when it——

Mr. FRIEDEL. The brotherhoods alone, not the railroads at all, are in on that.

Mr. CHESSER. Oh, sure.

Mr. FRIEDEL. And they hear the oral arguments?

Mr. JOHNSON. No, sir; there is some confusion there. The way it works, when the parties submit a case to the division, they are sup-

posed to show whether or not they desire oral hearing. If they request oral hearing, that docket is put aside to the oral hearing calendar, and the division holds hearings on all cases where they are requested, each year in the month of November.

Then at those oral hearings, the parties are notified of the date on which their particular dockets will be heard by the First Division, and these hearings are by the members of the division alone, no referees, because these cases have not been tied, nor deadlocked, nor progressed in any way toward a decision. They are held for the oral arguments, and then in November, the railroad may send in an attorney, a personnel man, whom ever they wish, to handle their case in oral argument, but this is before the members of the division alone.

Mr. FRIEDEL. Right.

Mr. JOHNSON. Then after the oral argument, that case goes on our working calendar, and takes its place going toward an award, so we will assume, then as time passes, it will be deadlocked, and a referee will be assigned to sit with us to decide that case. It is at this stage of the proceedings that the railroads asked for a change in our procedures, whereby instead of just having the members from each side present the case to the referee, they wanted to bring in other counsel, and assist in presentation of cases to referees. And as I have said——

Mr. FRIEDEL. You felt that was duplication and——

Mr. JOHNSON. Yes.

Mr. FRIEDEL. The organization felt it was duplication and they were holding up the referee's work? Is that it?

Mr. JOHNSON. That is right.

Mr. FRIEDEL. And that was on the site where the complaints were?

Mr. JOHNSON. That would be at the First Division in Chicago, Mr. Friedel. When we have the cases presented to the referees at the First Division, it is in the large board room, the 10 members are present, 5 carrier members and 5 labor members, the referee, and then if this change in our procedures had been agreed to by the organizations, each railroad having a case on this docket, going to the referee, would have been allowed to bring in counsel, and participate in the presentation in this of the cases.

Now when you consider that a deadlock is going to a referee who usually has from 40 to 50 cases, and the cases are handed to referees in blocks of about 5 at a time, it was our position that duplicating the case presentation which otherwise is done by the members of the division, through counsel, from either or both sides, would have just multiplied our work, and made a further slowdown in the conditions on the board.

There were other conditions attached to the railroad's offer of agreement on clearing up matters at the First Division, and I can't recall the exact details. We have it in our exhibit here, and what I would suggest at that time, if you will, is Mr. Chesser could proceed with his statement.

I will find that, and I can give it to you very concisely. There were four or five other changes that they demanded which I am sure you will agree would have just added to the workload there, and delayed our case presentation worse than it was.

And I will get that dug up.

Mr. STAGGERS. You may proceed, Mr. Chesser.

Mr. CHESSER. I do not intend to review the exhibits at this time, but, instead, direct your particular attention to exhibit No. 2, page 7, and exhibit No. 3, page 9; exhibit No. 5, pages 12 through 20; exhibit No. 7, starting at page 23, with particular reference to pages 30, 31, and 32 on recommended changes in division procedure.

These exhibits make it clear that all five organizations were equally concerned and joined in their efforts to bring about an improvement but could not then, nor can they now, overcome the refusal of the carriers to accept and apply the sound holdings from the 20,600 awards which have been made by the First Division, which is one of the principal causes for the resubmission of disputes which had had the basic issues decided a number of times in the past.

The performance of our member during the years 1952 through 1964 is outlined in some detail in our exhibits, and they refute the testimony of the carrier's witness on every point.

Exhibit No. 12, page 49 of our exhibits file, has former B. of R.T. First Division member, Bert Fern's letter of July 31, 1963, which was a reply to eight questions asked by Congressman John Bell Williams, who is a member of this subcommittee, about the reasons for the reported conditions on the First Divison.

It might be well to point out at this time that the material used in our exhibits has been in the hands of the carriers and although they have had opportunity to challenge and rebut it if they could, this has not been done.

At page 50, Mr. Fern recites how he had lunch with Mr. Daniel P. Loomis, then president of the Association of American Railroads, a few years prior to July of 1963, and gave him the full story on these conditions and asked his help in correcting them, but nothing was ever done.

At page 52 is a copy of a letter Mr. Fern wrote the five carrier members with a copy to the members of the National Mediation Board calling their attention to the record of his performance as a member during the period July 11, 1952, to April 1, 1962.

The letter mentions that during those 10 years:

> My office recognized our responsibility by writing out a total of 929 dockets and handed to the referees a total of 613 dockets wherein no briefs were prepared and where we either stood on the record or by agreement with the carrier members, furnished the referee prepared findings either denying or dismissing the claim, making a grand total of 1,542 dockets.

Mr. Fern went on to say that during this same period, the carrier members had responded to the extent of agreeing to pay only 21 claims without going to a referee and that this incredibly poor record was shared by only 3 of the 5 carrier members—

> because during this 10-year period neither Mr. Reeser nor Mr. Burtness ever agreed to sustain a single claim on their own, forcing us to take every docket assigned to those two carrier members to a referee for an award.

The table of performance by the Trainmen's office July 11, 1952, to April 1, 1962, is at page 53. The figures given there are taken direct from the records of the First Division and are a matter of fact: 929 cases disposed of without a referee by Mr. Fern himself; 613 where he directed the referee to deny or dismiss the claims, making a total of 1,542 which was 36.7 percent of the total output of the Division for those 10 years.

Remember, during the same period, the Trainmen's office was also required to brief and argue the cases which we thought had valid claims but which the carrier members refused to pay.

In addition, the records show the Trainmen's office handled an average of more than 70 cases a year to referees, for example, a total of 360 during 1958 through 1962.

I suggest that Mr. Fern's reply to Mr. Williams' eight questions, which at page 54 of the exhibits file, be read in its entirety, for a detailed picture of how things were being handled at the First Division at that time. At page 63, it is shown that for the 4-year period from 1958 through 1961, the Division decided 540 cases without referee assistance and 352 of them were Trainmen's cases; at the same time and during the same period, the carrier members functioned as such without referee, by paying a grand total of 7 claims, which is less than 2 a year and divided among 3 of them only.

Mr. Fern gives case histories of the work necessary in preparing and arguing a case to a referee, where the same issues have been decided in our favor time and time again but the carrier members have refused to apply them to sustain a valid claim. This material starts at the bottom of page 63 which is part of the reply to Mr. Williams, and continues to page 65.

The members of the committee should understand that we can determine which of the members are functioning as intended by the Railway Labor Act, by simply reviewing how the cases are disposed of. That is, it requires action by the labor members to deny or dismiss claims without forcing them to a referee and action by the carrier members to sustain claims without going to a referee.

When one side or the other agrees to such disposition, it is always agreeable to the opposition since the carrier members will join the labor members when the latter are willing to deny or dismiss a case; on their part, the labor members are glad to accept payment of a valid claim when offered by the carrier members and when either of these two things occur, then it may be said the members of the Division are carrying out their statutory duties unassisted.

That is why I emphasize that the performance of the Trainmen's member is proof positive for deciding cases by denying or dismissing invalid claims without the expense and delay of referee assistance, some 929 times as against performance of their function by the carrier members in only 21 instances over a 10-year period.

Refusal of the carrier members to pay claims does not mean they are all bad; that is borne out by the fact that in the 6-year period from 1958 through 1963, referees sustained the position of the employees; in whole or in part, in 349 cases.

Mr. Fern had an illustrious record among the railroad managements for his fairness in his dealings with them and this statement will not be denied by anyone who knew him. The memorandum which we attached to exhibit No. 12, commencing at page 70, tells of the refusal of the Chicago Great Western Railroad to comply with 13 awards of the First Division, rendered in June and July of 1936, which sustained claims.

As that memorandum states, Mr. Fern was the general chairman of the Trainmen on that railroad at the time and handled the matter. The memorandum gives the full particulars of how certain Senators be-

came concerned in the situation and took vigorous action which resulted in payment of the claims.

Senator Wheeler of Montana had this to say; see page 74:

All through these proceedings the representatives of the unions exhibited the patience and good judgment which we have come to associate with the leadership of the standard railroad labor organization.

We cannot afford to permit the amended Railway Labor Act, or any of its essential features, to be weakened or destroyed by shortsighted employers, who in order to gain a temporary advantage are willing to invite the industrial war.

Continuing on page 75, Mr. Wheeler went on to say:

I hope that when other disputes of this kind arise the parties will settle them among themselves, following an award by the Board, regardless of whether the award is in favor of the unions or in favor of the companies, and that it will not be necessary every time, in order to get them to settle the award, to have a resolution introduced in the Senate for an investigation of the situation.

The records of the Trainmen's office on the First Division in Chicago, Ill., show repeated efforts to prevail upon the carrier members to appoint one of their number to sit with the Trainmen's member for the purpose of disposing of Trainmen's cases. The suggestion repeatedly made was that a fairminded approach would result in the labor member agreeing to deny or dismiss invalid claims while the carrier members would agree to pay valid claims.

It was thought this would get rid of about 85 percent of them and the remainder would be submitted to referees for decision. These proposals have been rejected whenever made. The carrier members are only agreable to a proposition that the labor members write out all obviously invalid claims and let all the rest go to referees.

The proposal that a carrier member work with the Trainmen's representative to dispose of the Trainmen's cases and only send the 10 to 15 percent where an honest difference of opinion exists, to referees, has been renewed from time to time, but has never been acted upon by the carrier members.

The efforts of Mr. Fern to accomplish something in this direction were brought to Mr. J. E. Wolfe's attention at one point. Mr. Fern asked Carrier Member E. T. Horsley to cooperate along the lines previously mentioned and Mr. Horsley brought this to the attention of Mr. Wolfe. Under date of Januray 21, 1963, the latter wrote the following letter:

NATIONAL RAILWAY LABOR CONFERENCE,
Chicago, Ill., January 21, 1963.

MR. C. LUNA,
President, Brotherhood of Railroad Trainmen,
Cleveland, Ohio.

DEAR SIR: I have a copy of Mr. Fern's letter of January 17 in regard to our effort to expedite the handling of disputes that are now on the docket of the First Division, National Railroad Adjustment Board. "At the meeting on December 12, 1962, attended by representatives of all, or practically all, of the standard railroad labor organizations and representatives of the carriers, there was an appearance of sincerity and an expressed desire to cooperate in an endeavor to materially reduce or eliminate the backlog of disputes that is seriously interfering with the progression of disputes now before the National Railroad Adjustment Board and particularly the First and Third Division of the Board.

At a meeting with Mr. Leighty and his associates representing unions subject to the jurisdiction of the Third Division, on January 15, long strides toward accomplishing our mutual objectives were made. This is undoubtedly the result of the chief executives assuming responsibility that is vested in them at the

executive level. I am hopeful that the same assumption of responsibility will prevail when we meet with you and other chief executives of the operating brotherhoods on January 23. I am fearful, however, that if your subordinate at the adjustment board level continues to inject himself into the picture for the obvious purpose of precipiating controversy, our efforts which began so well may be doomed to ignominious failure.

Perhaps you will consider it advisable to tell Mr. Fern, as I told Mr. Horsley, to refrain from either discussing or corresponding about this subject until it is disposed of at the higher level.

Yours very sincerely,

J. E. WOLFE, *Chairman.*

cc: Messrs. Leverett Edwards, Chairman, NMB, E. T. Horsley, A. H. Chesser, B. W. Fern.

This, of course, was in opposition to Mr. Fern trying to make arrangements to speed up the operations of the Board.

When we consider the question of who was attempting to cooperate here, that letter should be self-explanatory.

Further, on the testimony of the carrier witness, June 9, wherein it was said Mr. Fern and the Trainmen's organization in general had refused to cooperate, I refer you to page 83 of our exhibit, which is a letter dated May 6, 1964, from President L. B. Johnson to the Chairman of the National Board directing that the National Railroad Adjustment Board "should seek means to improve its procedures in order to reduce its backlogs to manageable proportions."

Thereafter, under date of July 28, 1964, Mr. J. E. Wolfe wrote President Luna of the Brotherhood of Railroad Trainmen concerning a proposal to set up supplemental boards to get rid of the First Division backlog. See page 84.

Exhibit No. 16 at page 86 is President's Luna's reply of August 10, 1964, pointing out flaws and deficiencies in Mr. Wolfe's proposal and advancing countersuggestions aimed at bringing this about. Our exhibit No. 17, at page 89, is President's Luna's reply to an inquiry from Chairman Howard G. Gamser, of the National Mediation Board, dated October 6, 1964, which gives a detailed story of the handling between the Brotherhood of Railroad Trainmen and Mr. Wolfe as of that time.

In it will be found specific mention of the fact that when Mr. Fern attended the conference of June 11, 1964, for the purpose of discussing the problems in an effort to find a cure, he—

called the attention of all present to prevailing conditions which were causing the backlog and the long delay in disposing of disputes—the necessity of deciding everything with a referee even though the same question might have been settled in a number of prior awards of the Board. Mr. Wolfe said these things should not be discussed; that a solution was more important in improving conditions in the future.

You were present at that meeting and you will recall Mr. Wolfe saying he was not there to listen to criticism.

At page 100, which is page 12 of exhibit No. 17, it is said:

The problem which Mr. Wolfe and his associates will not face and attempt to solve, is the shameful productivity rate of the First Division itself and it is the primary reason these backlogs continually build up. Mr. Williams and your office have been furnished voluminous evidence on this, and I think it is clearly shown the main fault lies with the carrier members in their refusal to sustain any claim no matter how many precedent cases are shown them in support thereof.

We have shown the fact of only 22 sustaining awards on trainmen's cases in a period of nearly 12 years, we have shown that two of the five carrier members have never once agreed to pay a claim. It is a matter of fact that this same condition exists today; that if Mr. Wolfe's letter about telling his people to get

down to business was relayed to the carrier members of the First Division, somehow it must have been made known to them that they should disregard it.

In this connection, I direct your attention to testimony now in the record before the congressional subcommittee, of which Mr. Williams is chairman—

this was in 1964—

where the representatives of the railroad (who are the bosses over the carrier members of the Division) have categorically stated repeatedly that the managements are entitled to decisions by referees in all cases sent to the Board, under the provisions of the Railway Labor Act which spell out the mechanics of furnishing referees to break deadlocks.

Nothing further has been done by Mr. Wolfe or the railroads in an effort to weed out the defects in the proposed setup of the supplemental boards and with them present, it is self-evident we could not make the scheme work.

It was said, commencing at page 133, volume 2 of the report of proceedings containing the transcript of the carrier witness's testimony, that where both the conductors and the trainmen hold contracts on a given carrier, and one or more conductors belonged to the trainmens organization, that if only the trainmen had a special board functioning, conductors who were members of the trainmen only, would have no place to take their cases.

This is not true. For such men, if there be some involved, there is the first division of the NRAB, which is one of the many reasons why the four divisions of the National Railroad Adjustment Board must be kept in operation. To explain this briefly, let me say that if we set up a special board on a railroad to handle cases, and we have members in the ranks of the conductors whose cases could not be handled by that special board, and further assuming that the conductors do not have a special board going, then we merely have to send the claims of such conductors to the first division whose jurisdiction is not affected by this.

In fact, under the law, even an individual employee may elect to submit his case to the appropriate division either in persons or by counsel of his choice.

This same fact is true in the cases of trainmen who are members of the conductors organization on a property where a conductors special board is functioning; or where there is a similar overlap in representation as between the Switchmens Union and one of the other brotherhoods, or between the two enginemens unions—the Firemen and the Engineers.

The individual employee who belongs to an organization other than the one holding the contract under which he works, always has the Divisions of the National Railroad Adjustment Board available as a tribunal of last resort.

Mr. WILLIAMS. Will you permit an interruption, at that point, Mr. Chesser?

Mr. CHESSER. Yes, sir.

Mr. WILLIAMS. Let's take the case of the conductor who is a member of the conductors organization, but the representative of the conductors on that particular railroad might be the Brotherhood of Railroad Trainmen. This man has a claim, and you say that his remedy is in the Adjustment Board, First Division. Is that right?

Mr. CHESSER. Right.

Mr. WILLIAMS. Now the Adjustment Board is made up of three labor members and—is that correct?

Mr. CHESSER. Five.

Mr. WILLIAMS. Five labor members, and five carrier members. On the assumption that there is not representative of the conductor group on the First Division Board, then I presume that he feels that he is not being properly represented.

Is that right?

Mr. CHESSER. Well, there would be on the First Division a member of the conductor's organization as a member of the board.

Mr. WILLIAMS. In other words, do I understand that the five organizations are represented?

Mr. CHESSER. Yes, sir. Yes, sir.

Mr. WILLIAMS. I see. Well, that answers my question.

Mr. CHESSER. Yes, sir.

It was said that the Firemen's Supplemental Board has denied 80 percent of its cases. The records of the First Division show that the Supplemental Board has decided 39 cases since it came into existence March 15, 1965. Of them, 25 were denied and 1 dismissed, which is slightly more than 66 percent. The remaining 12, or 34 percent were sustained in whole or in part.

The performance of the regular members without referee since the first of the year shows this in contrast with the Fireman's Supplemental Board: A total of 65 awards were rendered. Of them, there were 43 trainman's cases which makes about two-thirds of the total; 29 of the 43 were turned down and 14 were sustained in whole or in part, which gives us approximately percentages of 2 to 1, or just about the same as in the case of the Supplemental Board—34 percent sustained and 66 percent denied or dismissed.

Incidentally on the question of whether the trainmen's organization is responsible for blocking production of the Division, it is a matter of record that out of the 93 awards rendered thus far this year, 65 without referee, and 28 with referees, there were 58 trainmen's cases, or more than 50 percent of the total output.

He then said he thought the success of the parties in the airline industry—

is largely attributable to the fact that the people get down there and try to dispose of these claims rather than incur the expense of bringing in a neutral.

The Committee already has considerable evidence proving that this cannot be done at the NRAB Divisions largely because, as the spokesman for the railroads testified last year, the carriers have taken a position that since the act contains provision for furnishing referees on deadlocked cases, they are entitled to have referees on all cases if they choose.

This can be brought about by simply deadlocking disputes and we have covered the situation on the First Division, showing that the carrier members do so by refusing to sustain claims. Mr. Wolfe has said that he is in a position of authority over the carrier members of the First Division and it is a matter of record that the conditions building up this backlog have existed for many years. Presumably he, as an officer in charge, knows these things but nothing has been done.

The carrier witness went on to say the blame for conditions at the Division is chargeable to the Brotherhood of Railroad Trainmen and

particularly its former member on the Board, Mr. B. W. Fern, now retired. The committee will have noted that the carrier witness supported some of his charges along these lines by the contents of certain written statements by Messrs. Burner, Macgill, Horsley, and Strunck.

Copies of those four exhibits were not furnished us since Mr. Wolfe only submitted five for the use of the committee members—that were at the hearings on the 8th and 9th—and we are now required to make our reply in the dark. We can only reply to what we have seen in the case and will do so to the best of our ability but our silence with reference to the four exhibits not given us is for that reason alone.

The testimony of the carrier witness is refuted by evidence submitted in our exhibits. The statements made, viewed in the light of the entire handling of these matters over a period of years suggests to me a determination on the part of the carrier witness to strike back at the one man who has done the most to throw light on the situation.

We can only assume from what is attributed to witness Horsley's statement that some mention has been made of the fact that Mr. Fern was sometimes away from his Division on special assignments.

If so, I tell you that the work of the Division was expedited because in the past several years, Mr. Fern went out on the properties of railroads and brought about satisfactory settlement of large blocks of claims otherwise headed for the First Division, and in several instances effected settlements which resulted in the withdrawal or disposition of cases then pending on the First Division.

A total of approximately 5,000 cases were taken care of by Mr. Fern and this fact is well known in the industry and particularly by the complaining witness, Horsley. For example, approximately 1,500 cases were disposed of on each, the Missouri Pacific and Missouri-Kansas-Texas Railroads, about 60 on the Nickel Plate, and probably twice that many on the Frisco.

Now aside from my statement here, if Mr. Fern was the impeding factor, here, as charged, then we wonder how he could settle 1,500 cases in a matter of months, but could not settle a hundred cases in years with the carrier members on the First Division.

In the meanwhile the work of the brotherhood was carried on without a hitch or delay because the president of the organization had long before appointed Mr. Fern's assistant to take over and represent us at any time when Mr. Fern was away. This gentleman sits here today, Mr. Chairman and members of the committee, who stays in Chicago every day, and has this authority.

Mr. Horsley worked with both, Mr. Fern and Mr. Johnson, every day and know these things, and in fact has been outspoken on the Division in his praise of Mr. Fern's national reputation for being able to go out on a railroad and clean up a batch of several hundred to several thousand cases in a matter of weeks or a few months.

In addition to all of this, the carrier witness is the carrier member who informed the Trainmen's office some several years back that then he and his associates would not agree to any sustaining award without referee assistance which would require the payment of 5 cents of money.

This same carrier witness is the one who handled the 17th of similar claims from the Denver & Rio Grande Western which involved the same rules and facts, and although the 16 previously decided sus-

stained our position, he compelled us to brief and argue the 17 to a referee.

Two years later, when we got No. 18, this same carrier member refused to follow the prior 17, and again we had to brief and argue it to a referee to get our sustaining decision. I have already called attention to our exhibit No. 12, Mr. Fern's letter of July 31, 1963, to Mr. John Bell Williams and if you will look at page 63 of our exhibit file, the last paragraph on the page contains a discussion of this situation.

It is unfortunate that the carrier member of the First Division who was responsible for the delay and expense of a referee in such facts, should be chosen to point the finger at Mr. Fern and charge him with being responsible for not getting cases decided.

Otherwise, the record of performance of the Division during the 12 years Mr. Fern served the Division as a member, shows that his office carried the burden of doing its work whether or not he was there. From 1958 through the present time, only 1 year did another organization handle more cases than the Trainmen's office and that was in 1963 when the Engineers disposed of 44 while the Trainmen handled 42. In other years, you will find in 1958, out of 457 cases, there were 193 Trainmen's; in 1959, we handled 165 out of 366; in 1960, 173 out of 366; in 1964, 41 of the 128 total.

For 1965, as already mentioned, the Trainmen have handled 58 of the Division's total of 93. When you consider there are five members on each side, it is clear the Trainmen's office has held up its end of the load and when you consider all that has been shown, it is equally clear that we could be disposing of about 500 cases a year by ourselves, if the carrier members would give up their position that they must have a referee on every case.

On this subject, I must comment on the statements by carrier witness Wolfe, page 155, starting with line 13 which praises the output of the Third Division supplemental board. There is strong reason to impute part of the blame for the uncompromising position of the carrier members to those who direct their work and Mr. Wolfe has a part in that, I am sure.

You have seen where Mr. Fern called his attention to the conditions on the First Division more than once, and yet when meetings were being held, with carrier witness Wolfe in charge of the railroad people, for the precise purpose of correcting them, it was his position that the matters were not to be discussed. Possibly the regular members of the Third and First Divisions should be given the instructions the carriers have given their supplemental board members if an improvement is to be brought about.

Note at page 159, line 2, the carrier witness comments on the very point the Trainmen's representative has made time and time again:

> But there you have only 2 men rather than 10.

In other words, if 2 men are put to work to dispose of cases on the merits and allowed to do so, they can accomplish more than 10 setting about the same task in the area of labor relations disputes and yet the carrier members have steadfastly refused to adopt such a plan on the First Division by appointing one of their number to work with the Trainmen's representative in the same way.

The charges levelled against our organization and its former member on the First Division have required me to make a suitable reply and I have tried to do so as briefly as possible.

I will not state the position of the Brotherhood of Railroad Trainmen on the three proposals made by the carrier witness, although not in the order made by him.

The first was stated by him, page 152, line 24, and reads:

I recommend that section 3 of the Railway Labor Act be amended so as to require that referee fees and referee expenses be shared equally by the parties and that they no longer be paid by the Government through the National Mediation Board.

We are not in accord with this suggestion. Evidence we have submitted in our exhibits and otherwise, in the course of these hearings, plus the testimony of carrier witness W. L. Burner at last year's hearings, makes it clear the primary responsibility for having referees in 90 percent of the cases lies with the carriers.

Mr. Burner testified very positively on this point, saying that since the act provided for furnishing neutrals in given cases, the railroads had the right to referee in all cases if they chose. The performance record of the first division carrier members which we have presented shows two of them had not agreed with the Trainmen's representative to pay a single claim from July 12, 1952, through August 31, 1964.

The other three combined had done so in only 21 cases in a 10-year period. Mr. Wolfe's suggestion, if acted upon favorably by your committee, would perpetuate the carrier members' practice of having referees in 90 percent of the cases and compel the organizations to share the expense.

The carrier witness stated another proposal at page 170 when speaking of H.R. 704 and suggested that—

if this committee believes that there is an inequity and the committee should recommend that the act be amended so as to permit judicial review by either party.

I have given this idea some consideration in my testimony on June 8. We think one of the worst defects in so amending the act would be to downgrade the divisions into doorways to the courthouse and that in a very short time, neither side would be inclined to pay much attention to decisions of the divisions but would regard them as preliminary in nature and just the first step in long-drawn-out legal battles.

Another bad feature of continuing the present ever-growing practice of disregarding awards of the division so as to get them before the courts, is the evils resulting from the de novo process applied by them under section 3, first, (p).

We have found that when the carriers get us into court, we are not only having to meet the burden of winning our case the second time, we are being confronted with the job of defending ourselves on a number of issues which were not present in the first place.

An example of this is the case the carrier witness was talking about at pages 105 and 106 of the transcript.

After giving his version of this dispute, the witness said, at page 106, line 9—

The carrier refused to apply that award because they could not comply with both the decision and the award. That case went to the Supreme Court of the United States. The carrier's action was confirmed.

What actually happened was this. For many years it had been an establish practice on the Denver & Rio Grande Railroad that the head brakeman of road freight trains was to be relieved on arrival at the final terminal and was not to be required to help the engine crew place the road engine on its tieup track.

A rule in the agreement provided—this is in the agreement between the carrier and the employees—provided that such terminal working conditions were not to be changed without negotiation and agreement between both parties to the contract.

Down through the years, the carrier violated that rule and the practice by posting instructions directing our men to do the work. The first time or two, the men simply made objections and the carrier admitted it was wrong, canceled the erroneous instructions and put the matter back where it belonged.

However, it would not be long before it would do the same thing again, and the men filed time claims which the carrier paid at the rate of an additional basic day to the men, correcting the violation and promising not to do it any more.

There were a couple of more times when the railroad committed the same violation and then refused to pay the claims which were filed even though it had paid such claims before. Our men took the claims to the first division and their position was upheld.

In 1949, the carrier again violated the rules and again time claims were filed and submitted to the first division. Before the case was decided, a special board was set up on the property in 1952, and it was withdrawn from the division and sent to the special board. In spite of all of the evidence, including the rules, past settlements on the property and two sustaining first division awards, referee Andrew Jackson denied the claims.

He was asked the reason for his decision and as pointed out in the supporting opinion of the labor members to award No. 19389, page 921, volume 142, first division awards, he replied, in effect:

> * * * that this decision was calculated simply to set aside all the evidence in the case for the purpose of granting to the railroad, "What in its opinion is the proper interpretation to be placed upon" the controlling rule.

In view of these facts, we had every reason to believe the decision of the special board was wrong but the carrier accepted it at face value. It immediately issued instructions requiring our men to handle the road engines to the tieup track again. This was in August 1952, and our men filed claims as in the past, which were then taken to the first division.

When our case was prepared there, all of this evidence was laid before the referee, Mr. John F. Sembower, and his award, No. 19389, handed down January 20, 1960, sustained the claims. The carrier refused to comply with the award and we filed an enforcement suit which was carried all the way to the U.S. Supreme Court.

During this trial, the carrier injected a new issue on the question of what damages should be allowed the man in event the carrier was guilty of violating the agreement. This was not raised at the first division because there is no dispute on this in the railroad industry, as this carrier well knew.

It had paid proper damages on identical claims as shown in the record and the division had imposed the same measure—a basic day's

pay in 117 D. & R.G.W. awards down through the years, just as it had done in several thousand similar awards involving a great many of the railroads.

Contrary to the statement by the carrier witness at page 106, the Supreme Court did not decide in favor of the carrier on the main issue and the only real one submitted to the first division. On that, it held in our favor and found the carrier guilty of violating the agreement rules.

However, the new issue brought in under the de novo process as to the measure of damages which certainly was moot in the light of the history of the question in the industry was decided in the carrier's favor.

The court allowed us only nominal damages of $1 in lieu of the basic pay to which the men were entitled.

Just one last word on this picture showing the wrongs done the men when the carriers are given a second chance to evade their claim liability. The carrier witness told the committee that large sums are at stake and put this on the basis of the men really having nothing coming, but under the act, are permitted to play a slot machine with wooden nickels, and so on.

In the first place, only a very small percentage of the cases sent to the board involve large sums, and I know of none running to the tune of $15 million, as was claimed. I doubt if 1 percent of them are in any appreciable size other than discharge cases which frequently cover 3 or 4 years of back pay.

In the second place, it must be remembered that these claims are based upon actions of the carrier which are said to be in violation of the agreements and if the men were to play with wooden nickels by presenting claims utterly without basis or foundation they would be in danger of discipline.

The carrier is the acting party. It commits or brings about the alleged infraction in the beginning. Then as to the amount of money running into large sums; this is completely in the hands of the carrier. It can end its liability at any time by stopping the violations until the case is decided.

If the carrier does not do this, then its member on the first division can do so in its behalf by disposing of the case on the proper basis as soon as possible after it is docketed.

Instead the carrier members compel us to keep that case in its place in our calendar and wait some 6 to 10 years until it can be decided by a referee. Now Mr. Chairman and members of the committee, I think this: The records indicate quite different than what the carrier witness testified to, that they would like to get away from this liability, and have these claims taken care of as quickly as possible. The records don't bear this fact out.

I have tried to cover the main reasons we are not in favor of Mr. Wolfe's statement.

I have tried to cover the main reasons we are not in favor of Mr. Wolfe's second suggestion as briefly as possible. We believe they are substantial and request you to give the whole question serious consideration. It is our position it is more desirable to keep H.R. 704 in substantially its present form which aims at correcting present inequities of the act, and no more.

Third, we consider the proposal that section 3 of the act be amended so as to set up a supplemental board for the sole purpose of handling Trainmen's cases. This appears at page 154, line 25, last word, ending on page 155, and reads:

> The solution is the creation of a supplemental First Division to handle BRT disputes only. Such a board should remain in existence until the backlog is eliminated, and referee fees and expenses incurred by the board should be shared equally by the parties.

Some members of this committee are familiar with the reasons why H.R. 701, H.R. 704, and H.R. 706 have been submitted to the Congress. They have been described in detail in our exhibits and in the opening statement. Basically, the one most imporant reason is the slowdown on the division and the building up of the backlog which resulted from it.

We have shown that much of this is caused by the fact that 90 percent of the cases have to be decided by referees and carrier witness Burner told why this is. We have made it a matter of record that the Brotherhood of Railroad Trainmen member on the division has tried time and time again during the past 10 years to get the carrier members, or their bosses, to assign a carrier member to work with us to reduce or eliminate the Trainmen's backlog and they have steadfastly refused to do so.

In fact, this was brought up in the meeting with carrier witness Wolfe in 1964 and he refused to talk about it. Nothing has been done about it since then although the BRT member has again and again made the proposal to the carrier members.

Carrier witness Wolfe stresses the good results by the Firemen's supplemental board and attributes much of this to the fact that 2 men, not 10, are meeting to decide the cases. It is a matter of record here, that two men could have been meeting in much the same way any time these past 10 years to handle Trainmen's cases, if the carriers would agree to do so without insisting upon attaching unacceptable terms as the price of their agreement.

It is the position of the Brotherhood of Railroad Trainmen that this proposal is not acceptable nor equitable for these reasons:

(1) It is unjust and discriminatory to place such an amendment in the act, singling out any one organization, when the rest of the law has never had any such provision.

(2) It is equally unjust and discriminatory to amend the act so as to require one organization to participate in a supplemental board and to share part of the expense when a presently functioning supplemental board is not so organized.

(3) Finally, it is our firm belief the refusal of the carriers and their representatives to participate with us in handling Trainmen's cases along the proposed lines is a form of reprisal based upon the active part played by this organization and its member on the First Division, in calling this state of affairs to the attention of the Congress.

I thank you for the privilege of appearing here today and for the opportunity of presenting our position on these matters.

Mr. STAGGERS. Thank you, Mr. Chesser.

Mr. CHESSER. And I testified on the 8th and 9th. I have Mr. Johnson here with me.

Mr. STAGGERS. Do you have any questions, Mr. Friedel?
Mr. FRIEDEL. I will defer, Mr. Chairman.
Mr. STAGGERS. Mr. Devine.
Mr. DEVINE. I have no questions.
Mr. STAGGERS. Mr. Williams.
Mr. WILLIAMS. Thank you, Mr. Chairman.

Mr. Chesser, so far what I have gotten out of these hearings from the context and contentions of both sides is an admission on the part of both sides that a very bad situation exists and which should be corrected. I have also gained the impression that each side attempts to place the burden of the blame on the other side, entirely.

I don't think that this committee is going to be in a position, certainly not on the basis of the testimony that has been given thus far, to fix the blame either on the carriers or on management. It seems to me that both sides, if I have listened to the testimony correctly, must share, to some extent, at least, the blame for this situation.

What the committee is looking for—I am quite sure—certainly I have this in mind—is the proper avenue of relief to follow in order to correct what is a very bad situation. In your statement, for instance, on page 7——

Mr. CHESSER. Is that the statement this morning, Mr. Williams?

Mr. WILLIAMS. Yes; page 7. In the first double-spaced paragraph, the last sentence, you say the carrier members are only agreeable to a proposition that the labor member write out all obviously invalid claims and let all the rest go to referees. Let me ask you, what is an obviously invalid claim doing before the adjustment board in the first place?

Mr. CHESSER. Well, Mr. Johnson, would you answer that?

Mr. JOHNSON. May I answer?

Mr. WILLIAMS. Yes, sir.

Mr. JOHNSON. By that we mean a case which based on our experience and our knowledge of the proper application of the rules to the facts, the members of the board would agree the claim is obviously invalid. This does not necessarily mean that the individual who filed the claim has knowingly made a bad claim, and in Mr. Wolfe's expression, hoped "to play the slot machine with the wooden nickel."

We have cases, Mr. Williams, where an individual will make a claim against—based on his knowledge or understanding of the agreement. This man may only have a few days, a few weeks, or a few months of service, not know too much about the contract. He will take a position with respect to this claim, and it will be handled by the organization representative in the necessary steps, and possibly the chairman will agree, or think there is some merit in his position, and, therefore, submit it to the First Division, but we feel that the members on the board are to be appointed there because they have a background and a knowledge of these matters, and should be experts in the field, and to men of our background, and knowledge, we would say immediately, while there may be a talking point here, and possibly I would say, if I were to brief this and take it to a referee, I might be able to twist or distort or put it over on this referee who is not familiar with railroading, with our agreements and our rules, and possibly prevail upon him to sustain the claim.

Mr. WILLIAMS. You mean, to sustain an invalid claim?

Mr. JOHNSON. I say, if we were to figure that way, we could so handle. Our office does not believe that the interests of the organizations or of the industry are helped by efforts to do this. So, therefore, this claim, in our opinion, is an obviously invalid claim, but this is not expressing criticism on the man who put it in, or the officers who progressed it to us. That is where we are exercising our function, as we see it, under the act, to deny such claims, and not take them to a referee, although we could in many of these cases take advantage of prior awards, let's say, and try to convince the referee it is a valid claim.

Mr. Williams, you have a legal background, don't you?

I am sure.

Mr. WILLIAMS. Yes.

Mr. JOHNSON. And you know that in all lines of decision, you always have a minority of decisions which are, shall we say, out of step with the majority. Now you have a weight of authority, in other words. We have the same thing in our work. In one particular line of cases, we have, say, 163 decisions by the divisions of the NRAB on a given class of cases.

Of these 163, about 12 or 13 are at variance with the other 150. Now I believe it is my job, if I am doing my job for the brotherhood, to notice that the 150 which have held more or less uniformly and consistently on these principles is the weight of authority, and so if I were to have one of these cases which falls under 10 or 12 or 13 conflicting decisions, I think I would not be doing a service to the brotherhood if I were to handle that, and try to persuade some referee to sustain this claim on the basis of the 12 or 13 to me obviously erroneous decisions.

Instead, I would insist on applying the 150 which I know are the correct weight of authority, and deny the claim. That is my position.

Mr. WILLIAMS. Mr. Johnson, I am afraid you went all the way around the world, and did not answer the question.

Mr. JOHNSON. Well, I am trying to.

Mr. WILLIAMS. Yes; I have a legal background, and I feel that I am bound by the ethics of my profession to tell a prospective client whether, in my opinion, he does have or does not have a valid claim, if I have an opinion on that subject, and I would think that particularly in view of the fact that the BRT has been charged with negligence or a failure for some other reason, perhaps, to screen its cases properly, that has been attributed as one of the reasons why there is such a tremendous backlog in the first divisino. Now reread this sentence again, in the light of what you have said.

The carrier members are only agreeable to a proposition that the labor member write out all obviously invalid claims.

Now the rest of it is a charge that the carriers want everything else to go to the referees. But with respect to "Obviously invalid claims," what is wrong with the carrier's position in that? You would like for them to pay all of the obviously invalid claims?

Mr. JOHNSON. That is right. I will explain how that works. We did exactly there what we are talking about here for 10 years, let's say. During that 10-year period, our office, without referee, and on our own motion, went through the pending trainmen's cases, and

weeded out in excess of 900 cases, which we thought were invalid and should be denied or dismissed and we denied or dismised those cases.

Mr. WILLIAMS. Let me interrupt you at this point.

Mr. JOHNSON. Yes, sir.

Mr. WILLIAMS. If a case is obviously invalid, why is it not screened?

Mr. JOHNSON. The question of screening goes ahead of the first division.

Mr. WILLIAMS. The word "obviously" means invalid on its face, I would presume. In the context of the sentence.

Mr. JOHNSON. Well, it might be a question of semantics. I would say frankly, Mr. Williams, that when we drafted this, we did not anticipate the one word being seized upon. Not exactly the way it reads.

Mr. FRIEDEL. On the other hand, I can see where there is one side playing against the other side, and read on page 5 in the third paragraph.

Mr. WILLIAMS. Well, each side is putting the monkey on the other side's back. I can understand that, of course, but that does not help solve the problem.

Mr. FRIEDEL. The history of the work necessary to preparing and arrangement—an argument of a case to the referee, where the same issue has been decided in our favor time and time again, but the carrier members have refused to apply them to sustain a valid claim.

Mr. WILLIAMS. That is right.

Mr. FRIEDEL. So it is one side playing the other. One offsets the other.

Mr. WILLIAMS. That brings me up to this question, and I quite agree with you. I think it is a matter of both sides, to some extent, being a bit arbitrary, because the other side is being arbitrary.

Mr. CHESSER. Mr. Williams, right there in this sentence that you called attention to here, are you referring to the cases before our member on the First Division screens them as to how they got there? What period of screening do you have in mind?

Mr. WILLIAMS. I am assuming that the cases have already reached the First Division, and my question is, Why would an obviously invalid claim be before the First Division in the first place?

Mr. CHESSER. That is right. Now whats—that is what I want to answer.

Mr. WILLIAMS. And in the second place, if an obviously invalid claim reaches First Division, then why are the carrier members, by inference, being arbitrary in suggesting that the labor members write off all these obviously invalid claims?

Mr. CHESSER. Well, in your first part of your question, it is very easy to understand how you would have a good many, I would not say—the percentage, I actually don't know, I have no way of knowing, of claims that would be handled and sent to the First Division that were not valid claims.

It arises from this very fact. You may have a man who has been elected a local chairman on a property, that is very inexperienced. Now he is not schooled in that contract when he is elected. Right or wrong. He may write this claim, handle it to his general chairman, and these general chairmen are elected the same way.

They only have a certain term of office, and you may have a general chairman that is certainly inexperienced and this claim gets to the first division.

Mr. WILLIAMS. I understand that, of course.

Mr. CHESSER. So the screening process is in two places and first it is screened by the general chairman, and I personally know of many cases that never get to the First Division, then again, at the First Division. Of course, I think here of when we say all obviously invalid claims, this is a two-way street. And is pointed out in this testimony, if we are going to throw out invalid claims, we would like for the other side to do the same thing, and the record at the board does not indicate that.

Mr. WILLIAMS. Well that——

Mr. CHESSER. And we stand on the record at the Division, not on ours.

Mr. WILLIAMS. That confirms fully, I think, the charge that has made that both sides are being arbitrary to some extent in their actions on this board.

Now in this case the carrier members apparently refused to withdraw their obviously invalid cases and write them off. Not on the ground that the complaints are invalid, but on the basis that the carriers have refused to go ahead and grant the obviously invalid claims. Is that right?

Mr. CHESSER. Well, yes; I think the record here shows, and in this testimony, the number of cases that we withdraw——

Mr. WILLIAMS. Yes, sir.

Mr. CHESSER (continuing). Pretty well indicates that we are screening those cases and withdrawing those invalid claims.

Mr. WILLIAMS. Yes, sir, but the admission here that by inference, the carrier members are cooperating to clutter the docket with obviously invalid claims does not speak too well for the attempts of the carriers to get rid of this backlog.

Now regardless of what the carriers may be doing, and I am quite sure that they are doing the same thing insofar as obviously valid claims are concerned, they are still making you go to a referee, and—but if both sides, it seems to me, were to face this issue squarely, and come into court with clean hands, so to speak, they could wipe a lot of this off the docket.

Mr. CHESSER. Let me say here, I made the statement, so I know what I mean to say here. Maybe the language is not handled exactly as it should be, but it is this, in short, that if we will throw out all obviously invalid claims, or invalid claims, that would even be fine, and just let the rest go to the referee. Now that is why I say, and that is what I am talking about, now why we would take an obviously invalid claim to a referee. I don't mean this, at all.

Mr. WILLIAMS. Do I understand, then, the emphasis on that sentence should be put on the words "and let all the rest go to the referee"?

Mr. CHESSER. That is exactly right. They want us to weed these cases out. Well, so should they, and not say that "You throw so many cases away, and we will take all the remainder to the referee," instead of trying to sit down and settle those cases.

Mr. WILLIAMS. I think that that pretty well explains it. The fact remains that it is rather difficult to justify this insistence on keeping obviously invalid claims before the board.

Mr. CHESSER. That is not the intent of the statement, sir.

Mr. WILLIAMS. All right, sir. Now on page 11, as you were going through your statement, I noticed what I thought was an inconsistency in the approach that you took. Let's go to page 12, first.

You say "divisions," because as a spokesman for the railroads testified last year, the carriers have taken a position that since the act contains provisions for furnishing referees on deadlocked cases, they are entitled to have referees on all cases, if they choose, and then there is reference all through here to the arbitrary position taken by the carrier members of the board with respect to referees.

Go back to page 11, the third paragraph, you say the performance of the regular members without referees, since the first of the year, shows that in contrast to the fireman supplement board, a total of 65 awards were rendered.

So of them, there were a total—there were 43 trainmen's cases, which makes about two-thirds of the total. Is that an inconsistency in your statement?

Mr. JOHNSON. Can I answer that?

Mr. WILLIAMS. Does one contradict the other?

Mr. CHESSER. And—go ahead. Gene handled the cases.

Mr. JOHNSON. Those figures are a little in conflict with the general proceedings at the division. What happened there was there were 40 dockets on a given railroad. Two of the carrier members worked together in pulling those cases, and suggested to me that we could get together on these 40 cases, and if we could agree on the disposition, we could write them out with a referee. We will do that any time of the day or night they will come and give us such a proposition, so after I had gone through the 40 cases in that block, I proposed the ones we would deny, and suggested they sustain the others, in whole or in part.

After some dickering back and forth, I think we got rid of that batch of 40 in about a week's time, and we could do that, as I say, every week, but that is the exception.

We have at the present time—they came down since then—they had seven dockets on another railroad, and suggested we work on those. There their initial proposition was that they would pay a man 1 hour in lieu of a day's pay in one case, and deny the other six. After I reviewed the dockets, it was my position that four of the claims were valid. The man was entitled to a day's pay, not 1 hour, in the one that they were willing to pay, and I would deny the other three.

That group has lain on the top of my cabinet for about a month. I have asked the carrier member involved a couple of times if anything further will be done, but I am afraid that the fact that four of the seven require, in our opinion, a sustaining decision, they will probably wind up going to a referee.

Now, Mr. Williams, this will bear out what I meant by the statement here, where they say, write them out, let the rest go to a referee.

With those seven, the upshot will be, if we won't agree to a denial of six out of the seven, and 1 hour to the other man, then all seven will

go to referee. In other words, we won't get part. It is either whole hog or none.

If I can adjust one bit to this, now I got a copy of Mr. Horsley's written statement this morning. Mr. Williams, I recall to your memory the testimony last year, when yourself and Mr. Watson were questioning Mr. Burner, and you stressed your belief that the Railway Labor Act envisioned the members appointed by both parties acting there for the purpose of deciding these cases, 90 percent of the time, and only having a referee 10 percent of the time.

Mr. WILLIAMS. I don't recall quoting any figures on it.

Mr. CHESSER. Well, I may be a little wrong on the figures. It was probably 95 percent. So the record will establish this.

Mr. WILLIAMS. I do feel that was the purpose of settling these boards up, though—to get these cases resolved.

Mr. CHESSER. I would think that most of us would be in accord, that that is the idea of the Railway Labor Act, that these members appointed and the decision is therefore the purpose of deciding these cases primarily, and if they work in the manner contemplated by the act, we will have 90 percent denied without a referee, and only 10 percent, possibly, going to a referee.

Now the key to this is, we contend, a position by the carrier members that they are there as advocates on behalf of the railroads in all these cases. That they are there to present the cases to referees, if necessary, to get a denial award, in virtually all of these cases.

We again have argued and fought on the basis this is not so. We are here as members. It is our function to decide these cases. We should be chosen by our background, our knowledge, and ability to so function. Now in Mr. Horsley's statement here at page 1, he carries out just exactly what we are complaining about. He says:

> The adjustment board is a bipartisan tribunal. The regular members are not at all of the character of judges, but are more closely akin to that of advocates.

And that is exactly where the trouble lies.

Mr. WILLIAMS. I quite agree with you.

Mr. Chairman, I have some other questions, but in deference to other members of the committee, I am going to yield the floor, and with the understanding, if that is all right with the committee, that I might be able to ask these questions before we conclude.

Mr. STAGGERS. All right, if we can bring him back.

Mr. WILLIAMS. Well, I would like to ask them before he leaves, but I would like to yield the floor now to let somebody else get into the act.

Mr. STAGGERS. I don't believe we have anybody else, unless Mr. Pickle has a question.

Mr. PICKLE. I don't have a question.

Mr. STAGGERS. I would like to say there, Mr. Williams, we are trying to get along as fast as we can, and go right ahead, sir.

Mr. WILLIAMS. All right. With regard to the position which you take on Mr. Wolfe's suggestions, Mr. Chesser, Mr. Wolfe's first suggestion, which is covered on page 15 of the statement, I believe, that the expenses of the referees be borne by both parties, it seems to me that the carriers would not be so prone to insist that these cases go to referees.

You suggest that they are making you split the cost of the referees in this, and, therefore, they will send them all to referees. I don't think that they would be wanting to shell out their own money just to cost you money. I think that there is a great deal of merit in the suggestion that both sides share the expense of the referees in these cases.

I make that statement, of course, subject to further study and consideration.

Now as to the second point.

Mr. CHESSER. Let me say while you are on that——

Mr. WILLIAMS. I don't know that that calls for an explanation, because you gave a very good explanation of your position in your statement, but surely, if you want to, add to it.

Mr. CHESSER. I can say to you as honestly as I know how, we would. We would be going before a referee on every case. You compare our figures—our financial report with the railroads in which we deal. This would tickle them to death. Certainly it would. They could break some of these organizations in a matter of months. In a matter of months. They have got the money.

There would be added assessments to our membership, more than some of them could pay, to bear this burden because we would have to go to referees on all of these cases. There would be no question about it.

Mr. WILLIAMS. Iwould like to have additional enlightenment on that subject.

Mr. CHESSER. We will give it to you.

Mr. WILLIAMS. Now as the second suggestion that he made, and that was to the effect that if we wanted to make sure that both parties were treated equally, the committee might recommend, and they would not object, the right of the employee who has been denied a claim to pursue that further in court. Would you prefer that situation to the present situation?

Mr. CHESSER. I would say if you had——

Mr. WILLIAMS. On the assumption that the committee reaches a point where it should decide either to leave the situation as is with respect to that, or to extend that same right to the employee.

Mr. CHESSER. No; I think they are both intolerable, and I will tell you, I will explain in short.

Mr. WILLIAMS. The alternative is to permit neither to go into court. That is right.

Mr. CHESSER. That is right, supposing the committee amended the act so as to allow the employee to go to court on a denial award. And the carriers now on money awards, of course, force us to court. Then if this comes about, you might as well abolish the National Railroad Adjustment Board, because it would only be a preliminary step to the courts. And this could not come about, because we could not stand the fees.

We would have to have a battery of lawyers to take every one of our cases to court instead of the National Railroad Adjustment Board.

Mr. WILLIAMS. Well, as it stands now insofar as the carriers are concerned—if I interpret this testimony correctly—it is already being used as a stepping stone to the courts for the carriers, but you don't have that right.

Mr. CHESSER. No; and we don't think either side should have the right, under the Railway Labor Act, and the intent of it as set up by Congress to dispose of these cases and do so as quickly as possible, and could be with the latest expense, that those awards should be final and binding, and that means on both parties, on all awards.

Mr. WILLIAMS. And the assumption that this committee and the Congress should not look with favor on the proposition that I have offered in one of these bills to deny access of the courts to either party, would you prefer that the situation remain as is, or would you prefer that you be given the right to go into court?

Mr. CHESSER. Well, I am here also as a witness.

Mr. WILLIAMS. Let's say that 704 should be tabled. Then would it do the brotherhoods any good, would it help remedy the situation at all to permit them to take their cases on into court and to pursue them further?

Mr. CHESSER. Let me say this. I am here as a witness for the Railway Labor Executive Association, and I think that would be stating policy, and I would not like to comment on it. I would not like to comment on it, until I discussed it with the heads of the organizations involved.

Mr. WILLIAMS. It seems to me that the question would answer itself. Certainly, this gives you an additional avenue of relief in those cases.

Mr. CHESSER. Well, I can see——

Mr. WILLIAMS. You are considering alternatives. I am speaking of the specific issue.

Mr. CHESSER. I can see where we would not have a labor organization very long. I can see why we could not afford this avenue of travel on all cases before the courts. They would sure cut down on the cases. There probably would not be any, if we had to take all of these cases to the courthouse.

Mr. WILLIAMS. No, no; I understand that. You would have a right to decide which cases you wanted to take, of course.

Mr. CHESSER. Oh, yes.

Mr. WILLIAMS. But this would give you an additional opportunity for relief; one more than you now have, wouldn't it?

Mr. CHESSER. Well, Mr. Williams, it means this. We would only be able to take cases which—I would say, maybe a half of 1 percent of all cases submitted, and process them through the courts. That is not going to mean just going to the county courthouse.

Mr. WILLIAMS. I realize that.

Mr. CHESSER. That is going to mean going to the Supreme Court of the United States. You know as an attorney how costly this is going to be to us. We just could not do it.

Mr. FRIEDEL. What do the claims run to, small amounts, big amounts, what is the average claim?

Mr. CHESSER. I just don't know what the average would be, Mr. Friedel. I don't have that experience at the First Division, but they run from small to a very, very few where a man has been discharged, and the case decided in 2 or 3 or 4 years, and decided with pay, what, $30,000, maybe?

If you have a figure, sir?

Mr. JOHNSON. We have. If you will pardon me a moment, our exhibit 18 lists some unapplied awards at the First Division that we

were compelled to handle further, and the amounts involved. Here is one—$160, $5,544, $10,392. Here is one—there was no money involved, the railroad would not comply. This one is $8,300. There is one down here for $37, one for $288, the most recent award of the First Division which the railroad has refused to comply with was an engineer's case which paid the man a day's pay at hostler helper's rate, and I believe that is $14.66. One $14.66 claim.

Mr. WILLIAMS. Do I take it that you don't want access to the courts? You don't want the right to appeal to the courts if there is no other alternative, from rulings of the referee?

Mr. JOHNSON. We prefer not. We prefer not. May I offer a suggestion here?

Mr. WILLIAMS. I am not sure that you understand my question in the first place, Mr. Chesser, because I don't think your answer would have been the same. If you did understand my question, then I certainly don't understand your answer.

My question is: Would you prefer an amendment to the act that would give you the right to appeal when you have been turned down by a referee?

That is, to appeal to the courts in preference to the present situation?

Mr. CHESSER. Well, probably so, but again as I say, we end up here with an intolerable situation.

Mr. WILLIAMS. Yes.

Mr. CHESSER. Of course we want a right, but if this comes about, there is a whole lot of explanation that has to go along with answering that question. You just can't say yes or no directly.

Mr. WILLIAMS. My question was predicated on the assumption that the legislation, H.R. 704, would not be enacted.

Mr. CHESSER. Then if we do, we can't just talk about, Mr. Williams. We can't just talk about going to court or not going to court. We just might as well talk about the situation, the whole situation, amending the entire act over again, and doing away with the National Railroad Adjustment Board.

Mr. WILLIAMS. Yes.

Mr. CHESSER. Now it would take someone a little better prepared and having more qualifications with this cost than I could right off the cuff says yes or no, so we would have to know how we were going to necessarily try to amend the act, because we would know you just might as well wipe out the National Railroad Adjustment Board, if you are going to go to court anyway, so there is a whole lot more involved than just saying yes or no.

Mr. WILLIAMS. I realize that. I am trying to anticipate what might possibly happen, and in the event it does happen, what the alternatives are, or might be.

Mr. CHESSER. Yes, sir.

Mr. WILLIAMS. Because certainly I can see, and I am fully convinced of a need for relief on the part of the brotherhoods in this instance. I am not at all satisfied that the law applies equal justice in this case, and what I am trying to find is that if we can't apply it in one manner, would you like to have it applied in another manner, and that is the purpose of my asking the questions.

That is all, Mr. Chairman.

Thank you.

Mr. JOHNSON. Mr. Chairman, I have a suggestion along the lines of what Mr. Williams was discussing. May I comment on it briefly?

Mr. STAGGERS. Briefly.

Mr. JOHNSON. Very briefly. Assuming the objective is to provide a means of appeal by both parties in the event they believe an award or decison is unjust—I was going to say "obviously unjust" but I am afraid of that word anymore—rather than providing access to the courts through H.R. 704, possibly some thought might be given to amending the act to provide for rehearings by the Division, as constituted when they made the decision in such cases.

At the present time, the act does not provide for nor permit rehearings. Down through the years, we have had a large number of cases along battles at the division level between the members and also involving the National Mediation Board on this question of rehearings. We have never granted a rehearing because as I say, the act does not permit it.

However, it may be something the committee might want to think about, if the problem is the question of appeal when either side believes the award is erroneous.

Mr. FRIEDEL. How could we clear up this backlog? Just reading the statement on page 16, the performance records of the First Division carrier members which are presented shows two of them had not agreed with the trainmen's representative or paid a single claim from July 12, 1952, through August 31, 1964.

Mr. JOHNSON. That is what we can't——

Mr. FRIEDEL. That is 12 years, and then you say you want to go back for rehearings.

Mr. JOHNSON. That is the problem, you see. We just make a further——

Mr. FRIEDEL. Not a single claim in 12 years, and now you want to go back for rehearings?

Mr. JOHNSON. That was a suggestion only. I did not say I recommended that with approval. I said I suggested it for the committee's consideration.

Mr. STAGGERS. Does that complete your testimony?

Mr. CHESSER. Yes.

Mr. STAGGERS. You may stand aside then.

The representatives of Mr. Wolfe. You do not wish to appear?

Mr. HOPKINS. Mr. Chairman, I would like to say this. At this time, we agree with Mr. Williams. I am counsel for Mr. Wolfe, the National Railway Labor Conference. We agree with you that the thing to do is to reach a solution to solve the problem, and in that respect, rather than today, in the brief time that we have heard this statement by the organizations, try to answer what they have said, we would like to file a written statement, with the committee.

May we?

Mr. STAGGERS. You may file a written statement, because we are going to close the hearings. We have been holding them open, longer, perhaps, than we should, and we hope to get through today, if we can.

The hearings will be held open for a certain period of time that you may have that privilege, but I just wondered if you had any oral statement or anything that you would like to give today.

Mr. HOPKINS. No, sir; we do not.

(The additional statement of Mr. Wolfe follows:)

ADDITIONAL STATEMENT OF J. E. WOLFE, CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE

I am James E. Wolfe, chairman and chief executive officer of the National Railway Labor Conference. On Wednesday, June 9, 1965, I had the honor to appear personally before your subcommittee at which time I submitted my written statement as well as the statements and exhibits of of four other carrier witnesses. At that time I also testified orally with respect to the three bills identified as H.R. 701, 704, and 706. This testimony appears in the hearing transcript commencing at page 94.

In my testimony on June 9, I opposed enactment of the three bills in question but also made certain suggestions for the consideration of Congress with respect to the problems, whether real or supposed, to which these bills are addressed. I say real or supposed problems because as I explained in my previous testimony, we do not believe that H.R. 704 is responsive to any problem or inequity that exists in the application of the Railway Labor Act; whereas the other two bills concern themselves with the backlog of cases pending before the First Division of the National Railroad Adjustment Board, which does represent a problem but one which these bills would aggravate rather than correct, in our judgment.

At the close of the hearings on June 9, Congressman John Bell Williams accurately summarized the suggestions I had made in my testimony (Tr. 175–177), and the hearings adjourned subject to resumption for purposes of taking the testimony of union representatives as to my suggestions and to permit the carriers to express such further views as might thereby be rendered necessary or appropriate. Upon the resumption of the hearings on June 15 the spokesmen for the Brotherhood of Railroad Trainmen, Messrs. Chesser and Johnson, took occasion to devote almost their entire presentation to an attempted rebuttal of those portions of my testimony and other carrier evidence disclosing the principal reasons for the case backlog on the First Division, and only incidentally and superficially responded to the carriers' suggestions expressed in my testimony.

I do not propose to engage in a recriminatory exchange over the fixing of blame for the First Division case accumulation because it is my experience that such an exchange only sheds heat not light, and more importantly because the assessment of guilt for the backlog is secondary if not irrevelant to the question of solving the case backlog. The carriers accept whatever share of the blame rightfully may be charged to them and acknowledge that to whatever extent obviously valid claims have been denied by individual railroads or rejected by carrier members of the Adjustment Board, such actions to that extent have contributed to the accumulation of cases.

The only point which emerges from the clash of positions that we believe is pertinent to the deliberations of your subcommittee and to which we call attention, not as an indictment but because it is central to the problem before you, is the following: Any measure designed to remedy the backlog problem must provide some mechanism that will require or assure a more discriminating screening of cases by the B. of R.T. in order to reduce the incidence of "obviously invalid claims." (Statement of Al H. Chesser, p. 7; Tr. 226–234.) While the rejection of obviously valid claims by the carriers should be eliminated, this alone can have but a negligible effect on the First Division caseload. As I testified previously, and as shown on table 1 of exhibit 1 to this statement (to which I will refer in more detail hereafter), about 80 percent of the claims submitted to the First Division prove to be invalid. If we assume for illustration that only one-half of the 80 percent could be eliminated through screening out the obviously invalid ones, it follows that such a screening process could immediately reduce the 4,000 case backlog by some 1,600. On the other hand, if we assume the same ratio of inadequate screening on the part of the carriers, we could expect that better screening would reduce the backlog only to the extent of some 200 to 400 cases. This would be beneficial but its effect minimal.

It is necessary to recognize the reality of the unions' failure to screen claims and the impact of this failure on the First Division caseload as a predicate to consideration of measures designed to alleviate the backlog. It was in recognition of this reality that on June 9 I offered the subcomittee my suggestions for going to the root of the problem and effecting a cure rather than attempting symptomatic relief such as mandatory special boards. Without question such special boards would proliferate the problem because there would be even less

inducement to the screening of cases than exists at present and, thus, the attempted remedy would have just the opposite effect to that intended.

The remainder of my statement contains a brief analysis of the comments made by union spokesmen with respect to my suggested alternatives to H.R. 701, 704, 706. In addition, I have attached hereto exhibits containing information requested of me during my testimony on June 9. These materials are explained hereafter in the statement.

JUDICIAL REVIEW OF NRAB AWARDS

In my testimony of June 9 I stated that H.R. 704 is not responsive to any problem that has arisen in the application of the Railway Labor Act. I further stated, however, that while the carriers oppose any substantive or procedural change in the provisions of the act governing judicial review, if the Congress is of the view that any inequity exists to the disfavor of employees, the carriers would not oppose an amendment which would afford the employees the same right of access to the courts as that to which the carriers are entitled.

The principal objections of the union spokesmen to this suggestion would appear to be: (1) That the Adjustment Board would become merely a doorway to the courts; (2) that the organizations and employees could not afford to finance the resulting litigation; (3) that the carriers need no right to judicial review because they can minimize their liability simply by paying claims and not allowing large amounts of potential liability to accumulate; and (4) that the employees have been imposed upon by the carriers' reliance on their right of recourse to the courts.[1] These may be arguments but certainly they do not reflect a reasoned appraisal of the alternative to H.R. 704 suggested by the carriers. The superficial consideration accorded by suggestion by the organizations is evidenced by the fact that Union Witness Chesser was uncertain whether the organizations would prefer a right of judicial review to the present situation in which there is no right of appeal from a denial award. (Tr. 241–246.) My remarks will be addressed to the main contentions advanced by the organizations witnesses in opposition to an amendment which would accord both employee and and carrier access to the courts.

The argument that the NRAB would become but a stepping stone to the courts—that there would be a flood of litigation—is so transparent as to be absurd and, indeed, is patently at war with the companion argument that the unions and employees could not afford to litigate extensively. At the present time if an NRAB award denies a claim, generally that is the end of it. If my suggestion were followed, the claimant could obtain court review, but the choice would be his, not the carrier's. If he did not choose to litigate, obviously the claimant would be in no worse position than under the present law—he would simply have to accept the denial award. If a change such as I suggested were to make the board only a threshold to the courts and a flood of litiagtion were to result, this would be the unions' doing not the carriers'. But it is exceedingly unrealistic to argue that this would occur. Just as with other potential lawsuits, the claimant and his representatives would weigh the prospects for success and the importance of the case before deciding whether to appeal from an award. Clearly this is what the carriers have done. As shown by exhibit 1 to my original statement, the carriers have refused to apply only a handful of awards and enforcement actions have been extremely rare. The judgment the carriers have exercised is demonstrated by the fact that in most enforcement cases the carrier has prevailed. The same kind of discriminating judgment would be used by the unions, if for no other reason than their own self-interest because they no more than the carriers are prone to dissipate their resources pursuing frivolous lawsuits.

The representation that the unions and the employees cannot afford to litigate also is unlikely to gain any but the most naive adherents. It is the denial award which would require a decision by the employee and his representatives as to the warrantability of judicial review. If the claim is not worth litigating, either because of lack of merit or lack of importance, then the employee would be in exactly the same position as under present law—bound by the denial award—except that unlike the situation under present law, he possessed a right of appeal he chose not to exercise. If a claim which was the subject of a denial award

[1] Objections (3) and (4) of the organizations, while purporting to be responsive to the carriers' suggestion for granting a right of review to the employees, in reality are simply a restatement of their position in support of H.R. 704.

were sufficiently meritorious to justify an appeal, and its importance, whether in monetary terms, in terms of principle or otherwise, warranted resort to the courts, it may be taken as a certainty that an appeal would be filed and vigorously pursued. The unions have not lacked and do not lack the resources to assert the full measure of their rights and those of their constituents; nor is there any lack of legal representation to press their claims whether on a contingency basis or otherwise. The obvious fact is that the employees and their unions would initiate the appeals from denial awards and, thus, the frequency and cost of such litigation would be subject to their exclusive control. An amendment such as I suggested merely would grant them a right which they do not now enjoy. It also is evident that the number and cost of appeals from denial awards would be limited. Few awards are so devoid of merit as to call for review, as is demonstrated by the fact that the unions show little if any interest in a right of appeal, preferring to deprive the carriers of access to the courts to gaining such a right for themselves.

The third argument advanced by the union spokesmen is that the carriers have no need of judicial review because employee claims arise from alleged contract violations by the carriers and hence a carrier's liability can be minimized by ceasing the violations and paying the claims before a large potential liability accumulates. This is no more than a neat bit of sophistry. As I have repeatedly stated to your subcommittee, about 80 percent of the claims that reach the first division of the board are invalid, and this is not disputed by the organizations' witnesses. Certainly it is a perverted notion of justice to contend that the carriers can minimize their liability by the expedient of paying invalid claims. This argument by the organizations misses the mark entirely. Of course a carrier can and should minimize its liability by paying valid claims. But the right of access to the courts is needed to protect the carriers in those relatively few cases in which an adverse adjustment board award is so unsound and of such importance that, in the carrier's judgment, relief must be sought in court. There is no way in which a carrier's rights may be thus protected if foreclosed from access to the courts.

The last major argument of the organizations is that "In many instances claims resulting in favorable awards are abandoned by the employees, in the face of carrier refusal to comply, rather than to undertake the burden of protracted litigation" (statement of Jesse Clark, p. 4). This statement simply is at odds with the facts. It can only proceed from misinformation or a lack of information because we do not believe that either Mr. Clark or the Railway Labor Executives' Association, on whose behalf he testified, would deliberately present testimony calculated to mislead the subcommittee. Exhibit 1 to my original statement shows the awards of the first division which the Railway Labor Executives' Association claimed had not been complied with by the carriers, and the current status of each award. Not only are there a mere handful of unapplied awards, there are none which were abandoned, some progressing as far as the Supreme Court of the United States.

The organizations have made a number of extravagant claims about the supposedly dire consequences which would flow from an amendment to the act which would give them a right of appeal, even going so far as to say it would be "the complete opposite of a system of final and binding compulsory arbitration" (statement of Jesse Clark, pp. 5–6). It is untenable on the face of it for the unions to conjure specters of doom in an amendment which would give them a a right they do not now possess and would give the carriers nothing. The NRAB awards would be "final and binding" to the extent they are today except for addition of the employees' right of appeal, and would continue to be final and binding in the congressionally intended sense that disputes submissible to the Adjustment Board are not lawful subjects for contests of economic strength.

In whatever terms the organizations may couch their opposition to my suggestion, their position comes down to the same one which inspires their support of H.R. 704. They do not want a right of appeal themselves, they want the carriers deprived of access to the courts. Obviously, this is accounted for by the fact that few denial awards, in the judgment of the unions, would warrant an appeal. It is also true that relatively few sustaining awards warrant noncompliance by the carrier involved. However, those in which noncompliance is warranted have in the past involved and doubtless in the future will involve principles of such sweeping importance and sums of such magnitude that the

carriers are unqualifiedly and irrevocably opposed to any amendment which would seek to deprive them of their present right of recourse to the courts.

As I stated in my original statement and testimony, an amendment which would purport to prevent judicial review of sustaining awards would be subject to constitutional challenge on grounds of denial of due process and other grounds as well. This subject is developed in some detail in the statement of W. S. Macgill, which has been received in evidence by your subcommittee. If such a measure were enacted it is a certainty that constitutional contests would ensue which, during their pendency, would cast grave doubts on the integrity of the entire process and function of the National Railroad Adjustment Board and which, if decided in the carriers' favor, would plunge the existing grievance machinery into hopeless disarray. This would at least further retard the operations of the Board, and perhaps bring them to a complete standstill, thereby greatly compounding the already serious backlog problem. Thus, not only is H.R. 704 unresponsive to any real problem that exists under the present act, its passage would be antithetical to measures which might be adopted to remedy the one real problem that does exist.

In our judgment no change is needed in the judicial review provisions of the act, but if the Congress should conclude otherwise, I again urge you to give serious consideration to the carriers' suggestion that the existing right of judicial review be preserved and the same right extended to the employees. This is the only alternative to the present provisions which would be workable; whereas H.R. 704 urged by the unions would be destructive.

RELIEVING THE GOVERNMENT OF THE FEES AND EXPENSES OF REFEREES

In my previous testimony I suggested that an amendment to the Railway Labor Act which would require the parties rather than the public to pay the fees and expenses of referees would have the salutary effect or reducing the number of submissions to referees by providing a self-executing mechanism for inducing the carriers and organizations to screen their cases. Such a provision would have an immediate and lasting effect—not only would the first division backlog soon be dissipated, a similar accumulation of cases would not occur again. Obviously, the large case backlog reflects a failure to weed out those cases which the parties could resolve without the aid of referees. Regardless of the degree of responsibility for this failure on the part of the unions or carriers, a provision which would impose the cost of referees on the parties instead of the public would discourage both the carriers and the unions from the indiscrminate submission of cases to referees. This has been the experience in the airline industry.

The objections voiced by the organizations to this recommendation appear to be without substance. The gist of these objections is that a provision for sharing referee costs somehow would work to the unfair advantage of the carriers. It is said, in effect, that the carriers have greater financial resources than the unions and thus would abuse a cost-sharing arrangement by forcing cases to referees and thereby discouraging the progression of legitimate claims. If the unions harbor any genuine apprehension that this would occur, it would not be inappropriate to provide, instead of cost-sharing, that the fees and expenses of the referee be assessed against the losing party. We doubt that this would prove any more palatable to the organizations because they are just as aware as are the carriers that some 80 percent of the first division cases are denied by referees. (See exhibit 1.)

Despite the obvious speciousness of the claim that cost sharing would advantage the carriers, the theme is repeated in the organization statements in a variety of forms. The statement of Mr. Chesser places repeated emphasis on the refrain that the "primary responsibility for having referees in 90 percent of the cases lies with the carriers." (Statement of Al H. Chesser, p. 1; and see also pp. 16, 20.) What really is meant by this representation? The record is clear and undisputed that almost all cases submitted to the NRAB are employee claims; i.e, they originate with the employees not the carriers. At page 3 of Mr. Clark's statement it is said that "substantially all of the disputes considered by the Adjustment Board are brought before it by the employees." We also know from the record and without contradiction that about 80 percent of the claims submitted to the First Division are invalid. Thus, when it is said that

90 percent of the cases are forced to referees by the carriers nothing else is meant than that the carriers have declined to pay invalid claims. It is absurd in light of the facts to say that the carriers "force" most of the cases to referees when in reality the overwhelming bulk of them are not meritorious claims.

In opposing the cost-sharing proposal the unions in reality are demonstrating that they do not want a provision which would discourage the filing and progression of invalid claims. They say that their claims are not "frivolous" merely because many may involve small sums of money. (Statement of Jesse Clark, p. 8.) With this we agree. A great many claims are frivolous but the amount of money immediately in issue may not be determinative of this. But if a claim is important, regardless of the amount involved, then there is no reason why the parties should be unwilling to pay a part of the cost of deciding it.

If the claim is not of sufficient importance for the union to be willing to pay part of the referee cost, then why is it important enough for the Government to assume the entire cost? The answer is obvious. The organizations prefer retention of a system which fosters indiscriminate submission of claims with the cost borne by the public. Nothing could more eloquently bespeak the fact that a cost-sharing provision would, indeed, discourage the indiscriminate submission of claims.

The only other point raised by the organizations that warrants comment here is that in all other industries, including the airline industry, where referee costs are shared by the parties the decisions of boards are subject only to a very limited court review. (This appears in Mr. Clark's statement at pp. 9 and 10.) I already have discussed the matter of the final and binding effect of NRAB awards and pointed out that the number of sustaining awards subjected to judicial review is infinitesimal. This reduces the argument to the meaningless. I would add this comment. Neither Mr. Clark nor I are lawyers; however, I am advised that the nature and scope of judicial review of awards of airline system boards of adjustment has not been definitively established. I make no representations to your subcommittee in this regard. The important point is that on the facts before you the proposal for sharing referee costs should stand or fall on its own merits and not be submerged in alien arguments which in reality go to the questions presented by H.R. 704, and which were discussed earlier in this statement.

The provisions for cost sharing that prevail in the airline industry apparently have exactly the desirable effect that I have said would result in our industry under a referee cost-sharing provision. The unions in that industry certainly are no larger, nor in command of greater resources than the railroad unions. In fact, collective bargaining agreements outside the railroad industry involving unions of all sizes almost universally provide for sharing the costs of grievance arbitration. The Bureau of National Affairs in its treatise entitled "Collective Bargaining—Negotiations and Contracts" reports with respect to grievance arbitration (51:9):

"Expenses of arbitration are considered in 83 percent of arbitration clauses, up slightly over 1957. In practically all of these (96 percent) it is agreed that the expenses of the impartial arbitrator are to be shared. The remaining few agreements provide that the loser shall pay all—an apparent effort to discourage capricious reference of disputes to arbitration. Almost a third of these cost provisions add that each party is to pay its own incidental expenses."

The sharing of costs works no hardship on anyone and obviously operates to minimize both the filing of frivolous claims and the frivolous denial of legitimate claims.

A TEMPORARY BRT SUPPLEMENTAL BOARD

I pointed out in my original testimony that the backlog problem is in process of solution with respect to all organizations except the Brotherhood of Railroad Trainmen. The only objection to my proposal for a temporary supplemental board to dispose of the BRT backlog is that to single out one union would be discriminatory and somehow foreign to the general scheme of the Railway Labor Act. First, it will be remembered that I recommended that the BRT and the carriers make further attempts to agree on the establishment of a supplemental board, but that the subcommittee, in effect, retain jurisdiction so that in the event of a failure to reach agreement, a temporary supplemental board could be established by Congress to continue in operation until the BRT backlog is eliminated.

This proposal does not single out the Brotherhood of Railroad Trainmen—it has singled itself out. Every other organization either has no serious backlog problem or the problem is on the road to correction. As to the ill-considered charge that the proposal is some sort of attempted reprisal, the facts make it plain that the BRT backlog has accumulated over the course of many years and has at its root the failure of the organization to screen cases. Exhibit 1 to this statement contains information which was requested of me by Congressman John Bell Williams (Tr. 150–151). It will be noted from table 1 of that exhibit that over the period shown, January 1, 1960, to May 31, 1965, 78.4 percent of the BRT claims were denied or dismissed by referees. This compares with a 76.5 percent denial ratio for all First Division awards over the same period. Table 2 shows that for the same period only 62.8 percent of the Second Division claims were denied or dismissed. Table 3 shows a 68.5 percent denial or dismissal ratio on the Third Division and, finally, table 4 shows a 72.2-percent ratio on the Fourth Division.

These statistics demonstrate that it is no accident that the First Division has the most serious backlog problem and that the largest backlog of all is that of the Brotherhood of Railroad Trainmen. This backlog took years to accumulate and the responsibility for the excessively high ratio of invalid claims cannot be laid at the carriers' threshold but must be borne by the organization, regardless of any responsibility on the carriers' part for rejection of vlaid claims. In my previous testimony I explained the reasons for our optimism that the backlog of the First Division unions, except for the BRT, would soon be brought under control. I will not repeat this testimony except to call attention once more to the results achieved by the recently established Firemen's Supplemental Board. You will recall that the B.L.F. & E. backlog was second only to that of the BRT. In March of this year, by agreement, a supplemental board commenced to function, its purpose being the dissipation of the backlog of Firemen's cases. When I appeared before you on June 9 I stated that in the short time since its creation this Supplemental Board had decided 39 cases without referees. Since I testified the Board has rendered 16 more awards, also without a refree. Exhibit 2 shows the disposition of the first 55 awards. It will be of interest to the subcommittee to know that so far this Board of 2 men has considered 72 cases and expects that out of this number there will be agreement reached on others in addition to the 55 already decided.

The results achieved by the Firemen's supplemental board show what can be accomplished. There is no reason why the same cannot be accomplished with the B. of R.T. It is of importance in this connection to recall that the unions and the carriers agree that if the backlog could be eliminated, the regular First Division of the Board would be able to remain current (Tr. 68–69). This is why we believe a temporary measure such as I have proposed is superior to proposals which would permanently subvert the existing grievance handling machinery.

I again urge the subcommittee to consider creation of a temporary Supplemental First Division Board to pass on B. of R.T. cases, providing that organization and the carriers do not promptly reach an agreement to this effect.

ADDITIONAL INFORMATION REQUESTED BY THE SUBCOMMITTEE

I have referred previously to the data shown in exhibit 1, consisting of four pages, which was requested of me by Congressman John Bell Williams (Tr. 150–151). The data contained in exhibit 2 was not requested by the subcommittee but is supplementary to information I supplied in my original testimony. The significance of the information was explained in the preceding section of this statement. Exhibit 3 contains additional information with respect to the First Division Adjustment Board awards with which the carriers did not comply, as shown in exhibit 1 to my original statement. The additional information was requested by Congressman John Bell Williams (Tr. 120–122). The exhibit shows the date on which each claim arose, the date the dispute was submitted to the NRAB, the date the case was docketed by the NRAB and the date of the award. In the next to last column we have indicated the nature of each case. This was not shown on exhibit 1 to my earlier statement.

EXHIBIT 1

Report of certain information pertaining to awards rendered from Jan. 1, 1960, to May 31, 1965, inclusive

1ST DIVISION, NATIONAL RAILROAD ADJUSTMENT BOARD

Name of organization filing dispute	Total awards rendered	Number of awards denied or dismissed	Percentage of denied or dismissed awards to total
(1)	(2)	(3)	(4)
Brotherhood of Railroad Trainmen	486	381	78.4
Brotherhood of Locomotive Engineers	249	196	78.7
Brotherhood of Locomotive Firemen & Enginemen	213	150	70.4
Order of Railway Conductors & Brakemen	162	114	70.4
Switchmen's Union of North America	23	13	56.5
Miscellaneous	137	118	86.1
Total	1,270	972	76.5

2D DIVISION, NATIONAL RAILROAD ADJUSTMENT BOARD

International Brotherhood of Boilermarkers, Iron Ship Builders, Blacksmiths, Forgers & Helpers	37	30	81.1
Brotherhood Railway Carmen of America	551	330	59.9
International Brotherhood of Electrical Workers	191	121	63.4
International Brotherhood of Firemen & Oilers	53	29	54.7
International Association of Machinists	199	122	61.3
Sheet Metal Workers' International Association	66	39	59.1
Transport Workers Union of America	72	57	79.2
United Steelworkers of America	4	3	75.0
Miscellaneous	35	28	80.0
Total	1,208	759	62.8

3D DIVISION, NATIONAL RAILROAD ADJUSTMENT BOARD

American Train Dispatchers Association	105	82	78.1
Brotherhood of Maintenance of Way Employees	618	411	66.5
Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees	1,083	768	70.9
Brotherhood of Railraod Signalmen	463	338	73.0
Brotherhood of Railroad Trainmen	25	12	48.0
Brotherhood of Sleeping Car Porters	78	57	73.1
Hotel & Restaurant Employees & Bartenders International Union	158	140	88.6
Order of Railway Conductors & Brakemen	121	56	46.3
Transportation-Communication Employees Union (former the Order of Railroad Telegraphers)	881	551	62.5
Transport Workers Union of America	19	15	78.9
United Transport Service Employees	3	3	100.0
Miscellaneous	3,554	2,433	68.5
Total			

4TH DIVISION, NATIONAL RAILROAD ADJUSTMENT BOARD

Brotherhood of Railroad Trainmen	31	29	93.5
Railroad Yardmasters of America	122	75	61.5
Railroad Yardmasters of North America, Inc	12	12	100.0
Switchmen's Union of North America	2	1	50.0
American Railway Supervisors Association	81	46	56.8
Railway Employees' Department, AFL-CIO	6	5	83.3
Railway Patrolmen's International Union	61	47	77.0
Lighter Captains' Union, ILA	10	9	90.0
International Organization of Masters, Mates & Pilots	4	4	100.00
Brotherhood of Sleeping Car Porters	8	7	87.5
Hotel & Restaurant Employees & Bartenders International Union	8	6	75.0
Miscellaneous	51	45	88.2
Total	396	286	72.2

EXHIBIT 2

1st division supplemental board (B. of L.F. & E. claims only), Mar. 1, 1965, to June 15, 1965

Claims denied	39
Claims dismissed	2
Claims sustained	9
Claims compromised	5
Total	55

Awards of the 1st division National Railroad Adjustment Board with which carrier declined to comply

GROUP I

Award No.	Organization involved	Date claim arose	Date dispute submitted to first division, NRAB [1]	Date dispute docketed by first division, NRAB [2]	Date of award	Brief description of the nature of the claim, etc.	Comment
16558	BLE	Feb. 4, 1952 [3]	June 16, 1952	Aug. 18, 1952	Jan. 26, 1954	Discipline. Claim for reinstatement with pay for all time lost from date of dismissal. Award called for reinstatement with pay for wage loss, less credit for outside earnings.	Settlement reached in disposition of award in April 1954.

GROUP II

17646	B.L.F. & E.	Dec. 30, 1954 [4]	Nov. 21, 1955	Jan. 20, 1956	Oct. 2, 1956	Physical disability. Claim for reinstatement and pay for all time lost from date physically disqualified by carrier's chief surgeon. (Claim first progressed and dismissed in award 17161.) Award directed examination by board of 3 physicians.	On Sept. 4, 1964, court of appeals rendered decision affirming ruling by district court that order and award of NRAB should not be enforced. Certiorari granted by Supreme Court and is now pending.
19235	B.L.F. & E.	Oct. 11, 1957 [5]	Aug. 20, 1958	Sept. 24, 1958	June 15, 1959	Discipline. Claim for reinstatement and pay for all time lost from date of dismissal. Claim was sustained without back pay despite admission by neutral that the time limit rule had not been complied with by the employees.	Suit brought in Federal district court by claimant (organization had withdrawn from case). Carrier settled case out of court May 13, 1964.
19276	BRT	Oct. 14, 1957 [6]	May 2, 1958	Aug. 28, 1958	July 22, 1959	Claim for reinstatement and pay for all time lost from date allegedly refused employment by carrier. (Claimant had obtained judgment against carrier in amount of $16,000 on Mar. 3, 1957, account alleged permanent disability incurred on duty.) Award held that claimant was "entitled to an examination by the carrier's physician" and that, under certain conditions, he would be entitled to have a 3-doctor board, whose decision would be determinative as to whether he was to be returned to service and given back pay.	Carrier filed suit against BRT requesting declaratory judgment that no money was due the claimant. BRT filed suit against carrier to enforce award. Compromise settlement reached outside of court in December 1962, and both suits dismissed at that time.

19287	BRT	Sept. 30, 1957 [6]	Apr. 23, 1958	Sept. 24, 1958	Aug. 6, 1959	Claim for reinstatement and pay for all time lost from date alleged physically able to return to work. (Claimant had obtained judgment from carrier in amount of $2,005.28 account alleged permanent disability incurred on duty.) The award held the same as that set forth in remarks under this same caption covering award 19276 (same neutral as here involved).	Enforcement suit brought in U.S. district court. In compliance with decision rendered by court of appeals, that court remanded case to first division, NRAB, for a determination by the Board of an appropriate award. Award 20389 issued, again sustaining employees' position. Carrier refused to comply with award and organization again filed enforcement suit. District court ruled for carrier and case is now pending before U.S. court of appeals.
19288	United Steelworkers of America (case handled by BRT).	June 12, 1958 [5]	Aug. 12, 1958	Oct. 13, 1958	do	Claim for reinstatement and pay for all time lost from date allegedly refused employment by carrier. (Claimant had obtained judgment against carrier in amount of $75,000 account alleged permanent disability incurred on duty.) The award held the same as that set forth in remarks under this same caption covering award 19276 (same neutral as here involved).	Organization filed enforcement proceedings in U.S. district court. Case subsequently settled out of court, Feb. 1, 1963.
19372	BRT	June 5, 1952	Mar. 15, 1953 [7]	June 25, 1953	Dec. 17, 1959	Numerous claims for additional payments based on alleged misapplication of rules of agreement by carrier. Claims were sustained. (Insofar as award No. 19389 is concerned, claims identical to those involved in such award had previously been denied by a special board of adjustment on the property.)	Carrier prevailed in court and on Apr. 26, 1965, the Supreme Court denied certiorari in this matter.
19389	BRT	Aug. 7, 1952	Feb. 10, 1953 [7]	Mar. 24, 1953	Jan. 20, 1960		
19744	SUNA	May 20, 1958 [3]	Feb. 2, 1959	June 3, 1959	Dec. 12, 1960	Discipline. Claim for reinstatement and back pay from date of dismissal. Claimant admittedly had falsified application for employment. Award held that claimant should be reinstated with pay for time lost.	Suit pending in U.S. District Court for the Western District of New York.
19862	BRT	Jan. 9, 1959 [3]	July 9, 1959	Jan. 8, 1960	Feb. 17, 1961	Discipline. Claim for reinstatement and back pay from date of dismissal. Had been dismissed account responsibility for train accident. Award held that claimant should be reinstated with back pay.	Carrier prevailed in court and on Jan. 18, 1965, the U.S. Supreme Court denied petition for rehearing on denial of petition for writ of certiorari.
20071	BLE	Dec. 14, 1958 [3]	Feb. 23, 1961	July 5, 1961	Jan. 16, 1962	Discipline. Claim for reinstatement and back pay from date of dismissal. Had been dismissed account responsibility for train accident Award held that claimant should be reinstated with back pay.	Pending in U.S. district court. Carrier did not reinstate employee in accordance with award because in two medical examinations findings were that he was physically disqualified for return to service. Employee since has retired account physical disability.

See footnotes at end of table.

Awards of the 1st division National Railroad Adjustment Board with which carrier declined to comply—Continued

GROUP III

Award No.	Organization involved	Date claim arose	Date dispute submitted to first division, NRAB [1]	Date dispute docketed by first division, NRAB [2]	Date of award	Brief description of the nature of the claim, etc.	Comment
18720	B.L.F. & E.	([3])	June 18, 1957	Oct 14, 1957	May 14, 1958	Discipline. Claim for reinstatement and back pay "for all time lost." Had been dismissed account charge of assaulting two employees on duty. Claim sustained with "pay for time lost as the rule is construed on the property."	Carrier reinstated claimant in accordance with award but employees called strike to force their interpretation of such award with respect to back pay. In subsequent court action the Supreme Court upheld the lower courts in enjoining the strike to force the employees' interpretation.
19286	BLE	Dec. 18, 1956 [4]	Oct. 16, 1957	Jan. 2, 1958	Aug. 6, 1959	Claim for reinstatement and pay for time lost from date allegedly refused employment by carrier. (Claimant had obtained judgment against Carrier in amount of $60,000 account alleged permanent disability incurred on duty.) The award held the same as that set forth in remarks under this same caption covering award No. 19276 (same neutral as here involved).	BLE filed submission with 1st division, NRAB, requesting compliance be had with award. This claim pending.
19553	B.L.F. & E.	([5])	Mar. 2, 1959	Sept. 23, 1959	Aug. 4, 1960	Discipline. Claim for reinstatement and pay "for all time lost." Had been dismissed account charged with violation of transportation rule G–4. Claim sustained with provision that claimant would be "compensated for loss of wages in accord with the practice on this carrier as to deduction for outside earnings."	Carrier reinstated claimant in accordance with award but dispute exists as to interpretation of the award concerning back pay.
19979 19980	B.L.F. & E.	June 2, 1953 Sept. 25, 1953	Sept. 16, 1953 Nov. 6, 1953	Jan. 13, 1954 -----do-----	July 21, 1961 -----do-----	Numerous claims for additional payments based upon alleged misapplication of agreement rules by carrier. With exception of claims covering those claimants not specifically named, as involved in award No. 19979, all claims were sustained.	Carrier agreed to apply award but insisted on its right to cancel local agreement, which served as basis of sustaining claims, on 30-day notice of cancellation under the provisions of such agreement.

[1] This represents date that the original copy of the employees' initial submission was received by the first division, National Railroad Adjustment Board.

[2] The dispute is docketed after the carrier has filed its answering submission to the employees' initial submission and the employees have filed their reply thereto.

[3] Date dismissed from service.

[4] Date taken out of service.

[5] Date allegedly refused employment by carrier.

[6] Date of a statement given to claimant addressed "To Whom It May Concern" by a physician attesting to his employability "at any work he wants to do."

[7] Approximate dates.

[8] Date not specifically stated although award indicates claimant was given notice of his dismissal from service on Mar. 31, 1956.

[9] Date not specifically stated but date of offense in connection with which claimant was charged occurred on Oct. 7, 1958.

Mr. STAGGERS. Is Mr. Clark here? Would you take the stand, sir? I understand you wish to give a statement.

Mr. CLARK. Yes.

Mr. STAGGERS. All right, sir; if you will just take the stand there and proceed. Give your name and your association and if you wish to file your statement, you may, and give an oral statement. We will try to go through.

Mr. CLARK. Mr. Chairman, my statement is rather brief, so I don't think it will take very long.

Mr. STAGGERS. All right, go ahead.

STATEMENT OF JESSE CLARK, PRESIDENT, BROTHERHOOD OF RAILROAD SIGNALMEN, ON BEHALF OF RAILWAY LABOR EXECUTIVES' ASSOCIATION

Mr. CLARK. Mr. Chairman and members of the committee, my name is Jesse Clark. I am president of the Brotherhood of Railroad Signalmen and appear here today on behalf of Railway Labor Executives' Association and its 22 railway labor organization affiliates. Our initial testimony in support of H.R. 704 was presented to your committee by Mr. Harold C. Crotty who is unable to be here today because of prior commitments which could not be rescheduled.

It is my understanding that the purpose of today's proceedings is not the presentation of a rebuttal to the testimony offered by the carriers which I am sure time would not permit, but, rather, to receive our views with respect to the recommendations of Mr. J. E. Wolfe as to how the Railway Labor Act might be amended to eliminate some of the problems to which H.R. 704 is directed.

Mr. Crotty's testimony outlined our reasons for seeking the enactment of H.R. 704 and Mr. Wolfe's testimony gave the carriers' reasons for their opposition to the bill. In addition, however, Mr. Wolfe suggested certain types of amendments in lieu of those proposed in H.R. 704, if the Congress should conclude that amendments are necessary or desirable. It is to these suggestions that I will direct my testimony.

Before doing so, however, I think I should point out that while H.R. 701, H.R. 704, and H.R. 706 all relate to the procedure for the handling of minor disputes through the medium of the National Railroad Adjustment Board, the problems to which they are directed are different.

H.R. 704 and H.R. 706 are designed primarily to expedite the procedures before the Board so as to reduce the backlog of cases pending before the various divisions and to reduce or eliminate the delay in obtaining awards. H.R. 704, on the other hand, is concerned not so much with the delays in the Board's procedures as with the effect of an award after it is rendered and the methods of its enforcement.

In substance H.R. 704, together with the amendment submitted by Congressman Williams, would give the awards and orders of the Board that degree of finality customarily accorded awards of arbitration boards, namely, that they would be subject to review only with regard to jurisdictional or procedural defects. This, of course, indirectly would expedite the disposition of those disputes in that it would eliminate their being dragged out in the courts after having been decided by the Board.

The testimony offered on behalf of the carriers with respect to H.R. 704, while opposing any change in the present statutory procedure with respect to enforcement of awards of the Adjustment Board, in effect admits the injustice of allowing the carriers to obtain judicial review of awards while denying the same right to employees.

But the only solution offered by the carriers is the grudging concession that if Congress "should decide that both sides would have the right to judicial review, I think the carriers would be forced to accept."—testimony of J. E. Wolfe.

Superficially it might appear that this proposal of the carriers would place both parties on an equal basis and eliminate an existing inequity. But the fairness of the proposal is more apparent than real, and it would in fact aggravate the present failure of the Board to achieve the objectives for which it was created.

It must be remembered that substantially all of the disputes considered by the Adjustment Board are brought before it by the employees. A carrier needs no help from the Board or the courts in order to give effect to its own contentions as to the proper interpretation and application of agreements.

As the employer, it does the hiring and firing, it places men on their work assignments, it computes and pays their wages, it determines who shall be furloughed or recalled in fluctuations of business, and generally administers the labor agreements as it sees fit. If the employees believe that their rights have been violated the burden is upon them in every instance to establish the violation.

The Adjustment Board was intended to provide an inexpensive uncomplicated and speedy method of handling and disposing of these claims of employees.

These objectives have been greatly frustrated by the judicially developed system of allowing carriers to have a complete review de novo, on the merits, in suits brought to enforce awards of the Board.

In many instances, claims resulting in favorable awards are abandoned by the employees, in the face of carrier refusal to comply, rather than to undertake the burden of protracted litigation. The individual employees, and often the smaller labor organizations, simply do not have the financial means to litigate these matters through the Federal court system.

The carriers, on the other hand, maintain full time investigative and legal staffs, trained in these matters and capable of handling them at little expense. Thus, in any court proceeding, but particularly in a full, de novo trial on the merits, without limitation as to the amount of evidence or testimony to be introduced, and irrespective of whether it was ever presented to or considered by the Board, the employees have an inherent disadvantage.

In this connection, I might mention that while the act provides for payment of a "reasonable" attorney fee for the employees, as Mr. Wolfe stated, such fee is payable only if they shall ultimately prevail in the litigation. Before filing suit, therefore, they must be prepared to assume the risk of being faced with substantial legal expenses if they lose.

Having in mind these considerations with respect to the burdens faced by employees in actions to enforce favorable awards, it is clear that the carriers' offer to afford them the right review unfavorable,

or denial, awards is largely illusory. Presumably, the chance of succeeding in such a suit would be substantially less than in a case brought to enforce a claim which the Board had already found to be valid.

Moreover, in all probability the result of a successful suit to challenge the Board's denial of an employee's claim would simply be a judgment of the court remanding the dispute for reconsideration by the Board, after which the employees might be faced with the prospect of more litigation after issuances of a second award by the Board, whether it be favorable or unfavorable.

As I stated earlier, the carriers' proposal would not only fail to afford the employees any substantial relief from the impossible situation in which court decision interpreting the present act have placed them, but it would result in an even greater frustration of the objectives which the adjustment Board machinery was designed to accomplish.

In numerous recent opinions, involving the railroads as well as general industry, the Supreme Court has recognized the congressional policy favoring final and binding arbitration of disputes arising out of the interpretation of collective bargaining agreements.

Speaking with respect to minor disputes in the railway labor field, the court has recognized what it called—

> the superseding purpose of the Railway Labor Act to establish a system of compulsory arbitration for this type of dispute.[1]

The carriers' proposal to make all awards of the Adjustment Board subject to a complete judicial review de novo on the merits is the complete opposite of a system of final and binding compulsory arbitration.

The objective of speedy settlement of these disputes, the desirability of which has been recognized in the carriers' testimony here, would be further thwarted by extension of the area of judicial review of Board awards. And, as I have pointed out, the expense of handling these so-called minor disputes would be greatly increased.

One of the principal purposes of having a specialized board composed of management and labor representatives to determine these disputes, is to obtain the benefit of the expert knowledge of those representatives in the field of railroad labor relations, and their practical experience in an industry whose operations and problems are unique and different from those of industry generally.

Custom and usage, as much as the written language of formal contracts, is frequently determinative of disputes and grievances in the labor relations field. But if the decisions of a tribunal of this sort are to be completely subject to reversal on the merits, by judges having no acquaintance with the peculiar and often intricate problems involved, the experience and knowledge of the members of the Board will be wasted.

The carriers' testimony before this committee has also strongly endorsed the objective of uniformity of interpretation of collective bargaining agreements throughout the industry. This objective, too, would be completely defeated by submitting questions of interpretation of these agreements, for ultimate decision, not to one board of experts, but to many Federal judges throughout the land.

For the reasons that I have outlined, I think it is overwhelmingly apparent that the suggestions of the carriers not only would fail to

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[1] *Brotherhood of L. E. v. Missouri-Kansas-T. R. Co.*, 363 U.S. 528, 531.

remedy the inequities and inadequacies of the statutory grievance machinery which have developed as a result of judicial interpretation of the present Railway Labor Act, but would in fact aggravate those failings.

If the objectives of speedy, fair, and simplified handling and settlement of contract claims and grievances in this industry are to be achieved, it will be done by reducing to a minimum, rather than by expanding, the role of the courts in the field.

Another of Mr. Wolfe's suggestions was to amend section 3 of the act to require that referee fees and referee expenses be shared equally by the parties and that they no longer be paid by the Government through the National Mediation Board.

While this proposal is directed primarily to the provision of H R. 701 and H.R. 706 and purportedly releates to a reduction in the workload of the Board and its backlog of cases, it also, at least indirectly, involves the question of judicial review.

The alleged basis for the recommendation is that it would discourage the filing of "frivolous" claims and conform the procedure for the settlement of this type of dispute in the railroad industry to that prevailing in "every other industry."

I cannot believe that the carriers seriously believe that such an amendment would be either workable or equitable.

Apparently the carriers' idea as to what constitutes a "frivolous" claim is one that cost "up to $250 to dispose of and which involves $5 or $10."

Now, Mr. Wolfe knows, or should know, that the amount of money involved in a claim may or may not be important. The disputes which are submitted to the Board involve the interpretation and application of agreements and such is the Board's jurisdiction. The primary objective of the employees in submitting cases to the Board is to require the carrier to comply with the provisions of its collective bargaining agreement.

Whether the claim involves $1, thousands of dollars or no dollars, the Board is the only tribunal to which the employees may go to obtain a decision as to their rights. It is the only medium through which it can prevent a carrier from violating its agreements with impunity.

If employees do not object when they believe that their agreement is being violated and do not submit such dispute to the Board, they are accused of acquiescing in the carriers' interpretation of the agreement if a similar violation is later asserted.

Thus, by the very nature of things, the employees' claims, forced to the Board if agreement cannot be reached on the meaning of their contracts and their claims, regardless of the amount of money involved, are not frivolous.

This being so, what does Mr. Wolfe's suggestion mean to the employees? It means that they would share the fees and expenses of a referee who could not finally dispose of these disputes in favor of the employees. If the decision is against the employees, they have lost their case—they are through.

If the award is in their favor, the carrier can ignore it unless the employees start all over again in the courts and seek another affirmative decision. In this, heads you win, tails I lose, situation it would be

entirely inequitable to expect the employees to share the cost of referees.

Mr. Wolfe also suggests that the railroads and the employee organizations are the beneficiaries of a situation which exists in no other industry. He states that in every other industry, of which he has knowledge, the parties share the cost of disposing of this type of dispute which, he says, has a tendency to keep the filing of so-called frivolous claims to a minimum. He points to the airline industry as an example.

What he does not say is that in other industries, including the airline industry, these disputes are submitted to boards whose decisions are final and binding on both parties, are subject to review by the courts only on the very limited grounds upon which arbitration boards may be reviewed and are not reviewable on the merits.

It is not my understanding that the carriers have indicated any willingness to give such effect to awards of the National Railroad Adjustment Board. Mr. Wolfe's testimony clearly indicates that they would not.

Finally, I say in all sincerity that this proposal would place an excessive, unwarranted and unequal financial burden on the employee organizations. The cost spread among the several hundred railroads would be insignificant to them but to the few railway labor organizations involved, and especially the smaller ones, the cost would be oppressive and disproportionate to the benefits involved.

For the reasons which I have stated, it is our view that Mr. Wolfe's suggestion that the fees and expenses of referees be shared equally by the carriers and the employee organizations not only would fail to accomplish the results which he contemplates but would be most inequitable and burdensome to the employee organizations.

The other suggestion made by Mr. Wolfe to amend section 3 of the act was to create a Supplemental First Division Board to handle only those disputes which involve the Brotherhood of Railroad Trainmen. This has been discussed this morning by Mr. Chesser.

I must say, however, that I cannot believe that Congress would give serious consideration to this type of discrimination against a single railway labor organization.

In conclusion, I wish to say that the Railway Labor Executives' Association reaffirms its initial position with respect to the need for the enactment of H.R. 704 with an amendment designed to achieve the purpose of the one submitted by Congressman Williams.

Mr. STAGGERS. Mr. Pickle, any questions?

Mr. PICKLE. I think not, Mr. Chairman.

Mr. STAGGERS. Mr. Devine?

Mr. DEVINE. I just have one very brief comment, Mr. Chairman. I notice on page 4 of your statement, in which you are talking about the possibility of running up legal expenses if they fail. Have lawyers abandoned the practice of contingent fees like they used to have back when I practiced law?

I mean, if you are successful, you share in the fees, but if you are not successful, you take your chances?

Mr. CLARK. Not to my knowledge of this have they abandoned it, no.

Mr. STAGGERS. Thank you very much, Mr. Clark.

Mr. CLARK. Mr. Chairman, may I just please take this opportunity to thank the committee for your kindness and indulgence and I appreciate the opportunity of appearing before you and expressing our views.

Mr. STAGGERS. Well, we are glad to have you, and we want everyone who has any views on it to give them, and for that reason, we are looking forward to your transmitting your written statement to the committee.

The record will be held open for 5 legislative days for that purpose, and you may submit them during that time.

This does complete the hearings on these bills, and after the record is closed, we will have an executive session to determine what, if anything, will then be the action of the committee.

Thank you.

Mr. CLARK. Thank you very kindly, Mr. Chairman.

Mr. STAGGERS. I might say this that I have some papers that are to go into the record here, that are submitted by the switchmen's union. These will be considered in the record, as submitted.

(The document referred to follows:)

SWITCHMEN'S UNION OF NORTH AMERICA,
Buffalo, N.Y., June 14, 1965.

Hon. HARLEY O. STAGGERS,
Subcommittee of Transportation and Education, Interstate and Foreign Commerce Committee, House Office Building, Washington, D.C.

DEAR SIR: As a member of the RLEA and president of the Switchmen's Union of North America, I urge you and your committee to pass favorably on H.R. 701 and H.R. 704.

Our membership desperately needs the benefit of this legislation contained in each of these bills.

This legislation is necessary and essential to remove the present inequity which makes all awards denying an employee's claim final and binding while the awards which sustain an employee's claim when money is involved are not binding on the carrier. The employee's only recourse in an award of money is to have his case tried a second time by an appeal through Federal court.

This legislation is also essential in order to eliminate the large backlog of cases pending before at least, one division of the National Railroad Adjustment Board by providing for a more expedited means for disposition of grievances and claims. Expeditious handling of grievances and claims is a most essential element of the collective bargaining procedure.

We again urge your committee to give favorably consideration to this legislation (H.R. 701 and H.R. 704).

We respectfully request and will appreciate your reading this letter into the record and making same a part of the permanent record on this legislation.

Respectfully yours,

NEIL P. SPEIRS, *President.*

Mr. STAGGERS. The committee is adjourned.

(The following material was submitted for the record:)

ARIZONA STATE LEGISLATIVE BOARD,
RAILWAY BROTHERHOODS,
Phoenix, Ariz., May 24, 1965.

Hon. OREN HARRIS,
Chairman, House Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE HARRIS: In recent months Chief Justice Lorna Lockwood stated that we need more judges to cope with the exploding needs. Judge Yale McFate appointed two more judges. The trend throughout the country today is to have more and higher paid judges to handle some of the civil cases which were handed down from the 1929 model A Ford era.

The brotherhoods have a similar problem. We have a backlog of grievances dating from 8 to 25 years. In the past the 1926 Railway Labor Act has been amended, but the brotherhoods feel that it needs still further amendments.

H.R. 701 provides for the establishment of special boards. The management and the brotherhoods could work out employer-employee problems. This will eliminate the 7- to 9-year waiting period before an employee has his case heard before the adjustment board, as is now the case.

H.R. 706 provides that money awards will also be final and binding. The carriers have taken advantage of this part of the act and refused to pay awards of any consequence. The only recourse open to the employee is to try the case again on its merits through the long conjugated courts.

However, in the past the Santa Fe Railroad has set up special boards by the request of the employees. This is not a taxpayer burden.

Your support of these two bills would be greatly appreciated.

Sincerely yours,

EDWIN A. BERG,
Assistant Legislative Representative, Brotherhood of Railroad Trainmen.

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., June 14, 1965.

Hon. HARLEY O. STAGGERS,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN. In connection with the hearings of your subcommittee on H.R. 701 and H.R. 704, I wish to express the support of the AFL–CIO for this legislation to enable the National Railroad Adjustment Board to operate more effectively and more rapidly in handling disputes between carriers and their employees which grew out of grievances or out of the interpretation and application of agreements concerning rates of pay, rules, and working conditions.

In view of the tremendous backlog of cases now pending before the National Railroad Adjustment Board, in view of the long delay—ranging up to 9 years—in processing the grievance claims of railroad workers, we believe enactment of H.R. 701 and H.R. 704 is fully justified.

Therefore, we subscribe to the testimony on H.R. 701 and H.R. 704 presented to your subcommittee on behalf of the Railway Labor Executives' Association by Harold C. Crotty, president of the Brotherhood of Maintenance of Way Employees and chairman of the RLEA Committee on the Railway Labor Act, and by Al H. Chesser, national legislative representative of the Brotherhood of Railroad Trainmen.

Mr. Chairman, I respectfully request that this letter be included in the record of hearings by your subcommittee on H.R. 701 and H.R. 704.

Sincerely yours,

ANDREW J. BIEMILLER,
Director, Department of Legislation.

UNITED AIR LINES,
Chicago, Ill., June 18, 1965.

Hon. HARLEY O. STAGGERS,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: On June 9, 1965, at the hearing held before your subcommittee on H.R. 701, H.R. 704, and H.R. 706 to amend the Railway Labor Act, you invited suggestions from air carriers for other amendments of the Railway Labor Act which those carriers might deem advisable. Representatives of United Air Lines were present at the hearing, and we appreciate the opportunity to express our views.

Title II of the act made all provisions of title I of the act, with the exception of those relating to the National Railroad Adjustment Board, applicable to the air carriers. The amendments which we suggest are confined to title II, which does not apply to rail carriers. The collective bargaining history of the rail-

roads differs substantially from airline experience and it is our feeling that in a number of respects this history and experience are inapplicable and in appropriate to the airline industry. We feel that in some, but not all, respects airline experience is more in accord with American industry generally than with the railroad industry specifically. While we could not in the short period of time available to us fully prepare our suggestions, we feel that there are three major areas in which the regulation of air carrier management-labor relations should be brought in accord with the policies and practices established by and followed under the Labor Management Relations Act rather than title I of the Railway Labor Act.

First, we believe that supervisors and other members of an air carrier's management should be excluded from coverage of title II of the Railway Labor Act. These exclusions would conform to the national labor policy expressed in the Labor Management Relations Act. Moreover, in an industry in which safety of operation is so critical to the public interest, we think that it follows that supervisory and managerial employees should not be placed in a position where possible conflicts of interest may arise.

Secondly, an air carrier and any labor organizations claiming an interest in the scope of the bargaining unit should be afforded the right to be heard on such question. Both the National Mediation Board and the Supreme Court, however, have held that by virtue of section 2, Ninth, of the Railway Labor Act a carrier is not a party in interest and has no standing to be heard with respect to appropriate bargaining units; i.e., the logical grouping of employees for collective bargaining. The members of the subcommittee will recall the flight engineer strike on six major air carriers in January 1961 which arose from a determination by the National Mediation Board of the scope of a collective bargaining unit. Obviously, how employees are grouped for collective bargaining purposes has a direct and immediate effect on the operations of an air carrier. Further, in many respects only the carrier has the information essential to the determination of an appropriate collective bargaining unit. We recognize the employee's right to choose or not to choose a collective bargaining representative free from any interference by a carrier. We do feel, however, that, in a matter which so vitally affects the operations of the carriers for indefinite and lengthy periods of time, the air carriers affected should have the same right to present their views on the appropriate collective bargaining unit that employers in industry generally have. Under the Labor Management Relations Act, the employer is a party in interest during the NLRB determination of the scope of the bargaining unit. There seems to be no logical reason for failing to accord the airlines similar consideration especially in view of the rapid technological change which is characteristic of the airline business.

Thirdly, we think Congress should assure that airline employees have the right, when an election is conducted by the National Mediation Board, to express affirmatively on a ballot whether or not they desire to be represented. The National Mediation Board, however, has held that a representation election is for the purpose of electing a representative rather than for the purpose of allowing employees to decide whether or not they wish a collective bargaining representative. As a result, the Mediation Board uses a form of ballot that does not allow an employee to vote for no union. The Mediation Board's theory of the purpose of an election may be consonant with the history of railroad labor-management relations in which, since prior to the passage of title I, there have been no sizable groups of employees who are not represented by a labor organization. In the airline industry, however, large groups of employees have not felt the necessity for union representation although the airlines have been under the Railway Labor Act since 1936. At United Air Lines, for example, approximately 47 percent of United's 33,000 employees are not represented. Other carriers similarly have large numbers of unrepresented employees. Accordingly, it would seem much more in accord with the national labor policy for elections of air carrier employees to follow a procedure similar to the one followed by the National Labor Relations Board in which the employee has a right affirmatively to express his desire to remain unrepresented.

We wish again to express our appreciation for your invitation to express our views on changes in the Railway Labor Act.

Very truly yours,

CHARLES M. MASON,
Senior Vice President, Personnel.

BROTHERHOOD OF RAILROAD TRAINMEN,
Washington, D.C., June 18, 1965.

HON. HARLEY O. STAGGERS,
Chairman, Subcommittee on Transportation and Aeronautics of the Interstate and Foreign Commerce Committee, House of Representatives.

DEAR CONGRESSMAN: Upon conclusion of the hearings before your subcommittee on June 15, you informed us we had the privilege of adding a further written statement, if we so desired, and I am taking the liberty of exercising that privilege to call to your attention the following:

Witnesses on behalf of the railroads, both orally and in written statements, expressed opposition to H.R. 704 which, if passed in its proposed form, would make all awards of the divisions of the NRAB final and binding on both parties. Your familiarity with the evidence introduced makes it unnecessary for me to discuss it and I will confine this writing to preparation of our further evidence.

It is a matter of record that some of the Nation's largest carriers have negotiated agreements with the Brotherhood of Railroad Trainmen establishing special boards and in them, have incorporated language identical in effect with that in proposed H.R. 704. I am directing particular attention to such agreements with the following railroads:

1. Atchison Topeka & Santa Fe (Eastern & Western Lines). (April 19, 1955).
2. New York Central (Western Lines). (March 29, 1961).
3. Southern Pacific Co. (Pacific Lines). (September 3, 1952).
4. New York, Chicago & St. Louis (Wheeling & Lake Erie District). (October 23, 1963).
5. Reading Co. (April 19, 1962).
6. Erie-Lackawanna Railroad. (August 21, 1961).
7. Pittsburgh and Lake Erie Railroad. (January 13, 1965).

For the sake of brevity, I shall confine this presentation to excerpting the pertinent language from each agreement; they are from 2 to 5 pages long in their entirety and this is being done with the understanding that if your committee so desires, we will furnish the complete copies of each agreement for your record.

While specific reference is being made to seven agreements, this is not all of them but should be sufficient to make our point and the quoted excerpts which follow will be numbered to correspond with the agreement from which taken as listed above.

1. Paragraph J reads in part:

"* * * Such findings and award shall be in writing, and a copy shall be furnished the respective parties to the controversy. Such awards shall be final and binding upon both parties to the dispute. * * *."

2. Paragraph (H) reads in part:

"* * * Such findings and awards shall be in writing and copies shall be furnished to the respective parties, carrier and organization. Such awards shall be final and binding on bother parties to the dispute. * * * ."

3. Paragraph J reads in part:

"* * * Such findings and award shall be in writing, and a copy shall be furnished the respective parties to the controversy. Such awards shall be final and binding upon both parties to the dispute. * * *."

4. Paragraph (i) reads in part:

"* * * Such findings and awards shall be in writing and copy shall be furnished to the respective parties to dispute. Such awards shall be final and binding on both parties to the dispute. * * *."

5. Paragraph (H) reads in part:

"* * * Such findings and award shall be in writing, and a copy shall be furnished the respective parties to the controversy. Such awards shall be final and binding upon both parties to the dispute. * * *."

6. Paragraph (H) reads in part:

"* * * Such findings and awards shall be in writing and copy shall be furnished to the respective parties to dispute. Such awards shall be final and bind on both parties to the dispute. * * *."

7. Paragraph (H) reads in part:

"* * * Such findings and award shall be in writing and copy shall be furnished to the respective parties to dispute. Such awards shall be final and binding on both parties to the dispute * * *."

This evidence tends to refute the position adopted by Mr. J. E. Wolfe in the hearings before your subcommittee. It shows the railroads have virtually become parties to agreements establishing special boards which correct the obvious inequity of present 3 First, (m) of the Railway Labor Act by making all awards final and binding and this is no more than proposed H.R. 704 is intended to accomplish.

We trust this will be given full consideration in your further deliberations.

Most respectfully submitted.

AL H. CHESSER,
National Legislative Representative,
Brotherhood of Railroad Trainmen.

(Whereupon at 12:05 the subcommittee adjourned subject to call.)

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