

PROTECTIVE PROGRAMS FOR UNEMPLOYED AND
DISPLACED RAILROAD EMPLOYEES

by

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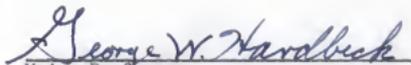
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INTRODUCTION

In a dynamic society such as ours it is often necessary for employees to adjust to changes. Sometimes adjustments can be made with relative ease; at other times transitions cannot be made without hardships. In the railway industry workers are experiencing difficulties adjusting to changes. Recent developments in this industry have enabled railroads to operate with fewer employees. A large number of the employees who are released from service in the railway industry cannot obtain suitable employment elsewhere. This is largely due to the low demand for unskilled and semi-skilled laborers. Many of the highly specialized skills of railroad workers are not transferable to other industrial occupations.

This report will focus attention on economic protection for railway workers who are left jobless or who are demoted to lower paying positions through no fault of their own. An unemployed railway worker will be defined as an employee who involuntarily lost his job with a railroad company and cannot find suitable employment in place of his lost job. He must be ready, willing and able to work. A displaced railroad worker also lost his original job. Unlike the unemployed railway worker, he will be able to "bump" a man in another position by means of applying his seniority rights. Consequently, the displaced worker will be able to obtain a different position, though usually less desirable. Unemployed and displaced workers such as these are seeking protection either in the form of preservation of employment or compensation for job losses and demotions.

Throughout the past thirty years numerous plans have been suggested to help maintain economic security for railway workers. These alternatives have ranged in magnitude from dismissal with no compensation whatsoever to proposals for a system of normal attrition. Under a plan of normal attrition, jobs scheduled to be abolished would not be vacated until the people filling them die, quit, retire or leave for any other reason. The large majority of the protective plans presented thus far fall somewhere between these two extremes.

In the first part of this report, employment trends in the railway industry will be briefly analyzed. Statistics describing the decline of the industry will be presented followed by attempts to project these trends into future years. Protective plans from the Washington Agreement of 1936 to the November 1963 arbitration award concerning firemen will be discussed. Attention will be given to protective plans currently at the employee's disposal and those suggested by the Presidential Railway Commission in February 1962. This report will be concluded with a brief appraisal of currently suggested protective programs.

Much of the material found in this report is based on the studies of the Presidential Railway Commission which reported to the late President Kennedy in February 1962. Precedent-setting cases involving the use of protective plans were reviewed from the finance dockets of the Interstate Commerce Commission. Useful statistics and opinions were supplied through the courtesy of the Association of American Railroads and the Railway Labor Executives' Association. Employment statistics were obtained chiefly from Interstate Commerce Commission data and from publications of the Railroad Retirement Board.

EMPLOYMENT TRENDS IN THE RAILROAD INDUSTRY

In the past ten years railway employment figures have dropped sharply. Over this time period the total number of employees decreased continuously, never showing an increase from one year to the next.¹ From an all time peak of two million employees in 1920, there was a drop to 1.4 million employees in 1947; only 0.7 million employees were in the railroad industry in 1962.² The 1947 to 1960 decline in railroad employment was numerically greater than that in any other industry. However, because of the widespread geographical dispersion of the railroad work force, this situation has not received the widespread publicity accorded the decline in coal mining employment.³ Nevertheless, numerous localities which have relied heavily on a railroad for jobs have suffered considerably due to curtailments of employment opportunities.

By Job Classifications

Certain classifications of jobs have exhibited larger declines than others. A comparison of the number and classification of railroad workers employed in 1952 with that of 1962 is presented in Table 1. Cutbacks were

¹ Association of American Railroads, Statistics of Railroads of Class I in the United States Years 1952 to 1962, (Washington: Association of American Railroads, 1963), p. 3.

² U. S., Department of Labor, Employment and Changing Occupational Patterns in the Railroad Industry 1947-1960. Bulletin No. 1344 (Washington: U. S. Government Printing Office, 1963), p. 1.

³ Ibid.

TABLE 1

AVERAGE NUMBER (MIDDLE-OF-MONTH COUNT) OF EMPLOYEES ON CLASS I RAILROADS IN THE UNITED STATES AND THE PERCENTAGE DECLINE IN EMPLOYMENT BY OCCUPATIONAL GROUPS, 1952 AND 1962

Reporting Division	1952 ^a	1962 ^b	Percentage Decline
Executives, officials, and staff assistants	15,749	14,454	8
Professionals, clerical and general	209,146	145,903	31
Maintenance of way and structures	241,948	102,274	58
Maintenance of equipment and stores	345,522	161,080	53
Transportation (other than train, engine, and yard)	143,081	77,743	46
Transportation (yardmasters, switchtenders and hostlers)	15,990	10,713	33
Subtotal (all groups except train and engine)	971,436	512,167	47
Transportation (train and engine)	254,985	187,979	26
Total	1,226,421	700,146	43

^aU. S., Interstate Commerce Commission, Bureau of Transport Economics and Statistics, Annual Report of the Statistics of Railways in the United States for the Year Ended December 31, 1952, LXVI, p. 62.

^bAssociation of American Railroads, Statistics of Railroads of Class I in the United States, Years 1952 to 1962, p. 3.

most severe among those workers with little skill or training. For this reason it is not surprising that the group with the largest numerical decline represents maintenance of way and structures employees, where there was a decline of 58 percent from 1952 to 1962. This category includes section workers, signalmen, and construction workers. The demand for these workers fell as railroads eliminated much excess mileage. Many labor saving devices lessened the need for large numbers of laborers. There was a 53 percent decline in the number of men maintaining equipment and stores. This is largely due to the dieselization process which eliminated the need for frequent repairs. Major overhauls on diesels are now done by the manufacturers, where railroad employees once overhauled steam engines.

Transportation employees other than train, engine, and yard workers declined in numbers as a result of technological changes and fewer numbers of trains. Centralized traffic control enables one man to control switching on as many as 200 miles of track. The decline in the number of passenger trains led to a lower demand for ticket agents. Better communications have replaced the telegraph and telegrapher. The United States Post Office Department ceased having trains deliver mail to many intermediate stops, thus resulting in station closures.

Yardmasters, switchtenders, and hostlers decreased in number due to improved signaling devices, modernized yards, and fewer engines. Electronic freight classification yards replaced many employees while speeding up service at the same time.

Of the decline in the number of white collar employees, the clerical workers sustained the largest proportional cutbacks. Many of these people

were replaced by data processing machines, improved index and filing systems, and by centralization of equipment. The number of executives, staff assistants, officials, professionals, and subprofessional workers changed very little over the 1952 to 1962 period.

The number of train and engine employees decreased by 26 percent over the 10 year time period. Dieselization accounted for some of this decline due to the fact that diesels can pull much longer and heavier trains than steam engines. This contributed to the trend toward fewer, but longer, trains. A large decline in passenger business eliminated the need for numerous train crews. Increased train speeds and fewer delays are also leading to a reduced demand for operating employees. Furthermore, increases in competitive pressures from other modes of transportation have diverted much traffic from the rails, thus eliminating trains.⁴ However, it may be noted that the proportionate drop in the number of operating employees was considerably less than that of the non-operating groups.

General Reasons for Declines

The overall change in railroad employment from 1952 to 1962 amounted to a 47 percent decrease. Technology has been largely responsible for the decrease as well as a serious loss of business, chiefly passenger, to other modes of transportation. Competition has become extremely keen in the transportation industries in recent years. This has forced railways to modernize their facilities and rely on new technologies to maintain

⁴ *Ibid.*, pp. 10-25. Most of the information found in this subheading is from this source.

or improve their competitive situation. Increased railroad wage rates and labor costs have led to larger demands for labor saving devices and a smaller labor force.⁵

It is difficult to measure the effects of business declines and technological changes separately on the railroad employment situation. Technological changes have been considered previously. Tables 2 and 3 indicate some of the effects of increased competition in the transportation industries.

TABLE 2
ESTIMATED VOLUME OF INTERCITY FREIGHT TRAFFIC, PUBLIC
AND PRIVATE, BY TRANSPORTATION AGENCIES,
1947, 1950, 1955, 1960^a

Type of Carrier	Revenue Ton-miles (billions)			
	1947	1950	1955	1960
Railways (including electric rail- ways, express and mail)	664.5	596.9	631.4	579.1
Motor vehicles	102.1	172.9	223.3	299.4
Inland waterways including Great Lakes	146.7	163.3	216.5	223.0
Pipelines	105.2	129.2	203.2	228.6
Airways (domestic revenue service) including express, mail, and express baggage	.2	.3	.5	.8
Total	1018.6	1062.6	1274.8	1330.9

^aU. S., Department of Labor, op. cit., p. 5.

⁵William Haber, "Technological Innovation and Labor in the Railroad Industry," Technological Change and the Future of the Railways, Selected papers from a conference at the Transportation Center, Northwestern University (Evanston, Ill.: Northwestern University, 1961), p. 112.

TABLE 3

CHANGES IN REVENUE FREIGHT AND PASSENGER MILES CARRIED
BY UNITED STATES RAILROADS, 1951 TO 1961^a

Year	Revenue Tons Carried (millions)	Revenue Ton- miles (millions)	Revenue Passengers Carried (millions)	Revenue Passenger- miles (millions)
1951	2,941	649,831	485	34,640
1952	2,770	617,942	471	34,033
1953	2,751	608,964	458	31,679
1954	2,424	552,197	441	29,310
1955	2,745	626,893	433	28,548
1956	2,856	651,188	430	28,216
1957	2,695	621,907	413	25,914
1958	2,317	554,534	382	23,295
1959	2,417	578,637	354	22,075
1960	2,409	575,360	327	21,284
1961	2,316	566,295	318	20,308

^aAssociation of American Railroads, Railroad Transportation, A Statistical Record, 1921-1961 (Washington: Association of American Railroads, 1962), p. 1.

While other carriers have increased their volume of freight traffic, railroads have experienced a decline. From 1947 to 1960 railroads suffered a 13 percent decline in the volume of ton miles of freight carried. In the same time period, the ton miles carried by motor carriers nearly tripled.⁶ In the 10 year time period from 1951 to 1961, revenue passenger

⁶U. S., Department of Labor, op. cit., p. 5.

miles carried by railroads declined by 42 percent.⁷ Such business declines as these have played an important role in changing the employment picture in the railroad industry.

Outlook for Future Trends

The outlook for future railroad employment figures appears to indicate continued declines. It is difficult to guess whether or not railroads will continue to lose business, but it appears likely that work rules changes, mergers, and technological improvements will exert downward pressures on employment figures.

The number of fireman-helpers will probably diminish as a result of recent decisions. In February 1962, a Presidential Railway Commission carefully analyzed the duties of the fireman-helper, and found that he performed no vital service on the majority of trains.⁸ A special arbitration panel granted the railroads permission to eventually eliminate 40,000 firemen's jobs. This panel which reported on November 26, 1963, allowed the railroads to dismiss 3,500 of these men when the order becomes effective and dispose of the remaining positions on the basis of an attrition plan. Due to a union challenge of this decision in the courts, it has not been put into effect as of March 20, 1964. Also under consideration are changes in the size of train-service crews. Under new procedures involving train-service crews, unions estimate that 50,000 jobs could be

⁷Association of American Railroads, Railroad Transportation, A Statistical Record, 1921-1961, p. 1.

⁸U. S., Presidential Railroad Commission, Report of the Presidential Railroad Commission (Washington: U. S. Government Printing Office, 1962), pp. 35-50.

considered for consolidation or elimination.⁹ Seventeen states have "full-crew laws" requiring minimum sized crews. These are expected to become targets of criticism by railroads, resulting in the repeal of some.¹⁰ It is entirely possible that many railroads will concentrate on so-called "featherbedding" tactics in non-operating jobs when the present situation among operating employees is settled.

Mergers also appear likely to disrupt the jobs of large numbers of railway workers. This problem has been met to a limited extent in the past as will be discussed in the next section. Previously, numerous abandonments and relatively small mergers prompted unions to demand protection. However, at the present time much larger mergers may have a profound effect on railroad workers. One study has led railway labor leaders to estimate that 200,000 jobs or more than 25 percent of the present workforce may be lost due to mergers.¹¹ By merging, railroads hope to eliminate duplicating facilities and improve efficiency and service. On the other hand labor leaders feel that mergers are merely cost cutting devices and lead to deteriorating service. Nevertheless, the trend today is toward railway mergers. Therefore, adequate employee protection plans are being analyzed and are gaining increased significance.

Already two large eastern carriers have merged, the Erie and the Lackawanna Railroads. The Interstate Commerce Commission has approved

⁹New York Times, November 27, 1963, p. 26.

¹⁰Ibid.

¹¹Duane Emme, "Rail Mergers and the Public Interest" (Washington: Railway Labor Executives' Association, 1962), p. 1.

the unification of the Baltimore and Ohio and the Chesapeake and Ohio. In an unprecedented move two profitable southern lines were granted permission to merge, the Atlantic Coast Line and the Seaboard Air Line. Now pending is a merger involving the Pennsylvania and New York Central Railroads, which rank first and second respectively among all railroads in total assets. These two lines estimate that 7,250 employees will be affected over a five year time period.¹² Many other merger proposals have been made and it is likely that additional merger petitions will reach the interstate Commerce Commission in the near future.

Another factor likely to diminish railroad employment is automation. Automation has caused deep concern among American union leaders. Accelerated automation will probably continue to do so in the future. Centralized traffic control has been introduced to many railroads and will probably continue to be installed. The objective of this system is to let one operator control train movements over many miles of track. Railroads have experienced up to 30 to 40 percent returns on such investments partly through the elimination of dispatchers, telegraphers, and maintainers.¹³ Microwave communications are eliminating the need for laborers to maintain pole line communications. Electronic computers are not only replacing men, but are devising plans for more efficient allocations of

¹² Penn-Central Merger Information Committee, Facts About the Proposed Merger of the Pennsylvania and New York Central Railroads (New York: Penn-Central Merger Information Committee, n.d.), p. 19.

¹³ W. P. Kennedy, "Automation and Mechanization in the Railroad Industry," New Views on Automation (Washington: U. S. Government Printing Office, 1960), p. 517.

labor resources. Fewer yard crews will be needed for additional electronic freight classification yards. Electronic hot-box detectors eliminate costly repair and inspection expenses. Improved diesels are requiring even less maintenance. Continuously welded rails over 1,000 feet long require much less maintenance than the old standard 39 foot sections. In our rapidly advancing society it is probable that new technologies will continue to disrupt certain types of railroad employment. Nevertheless, resistance by labor has prevented the utilization of some labor-saving devices.

After reviewing these preliminary remarks, it becomes apparent that an acute personnel problem exists in the railroad industry. Due to numerous factors the demand for railway workers has dipped sharply and will probably continue to decline. Such reductions in the workforce tend to remove men from work who cannot obtain equally desirable jobs elsewhere. Many of these men have incurred financial obligations in caring for families. Plans designed to protect these men will be discussed throughout the remainder of this report.

RAILWAY EMPLOYEE PROTECTIVE CONDITIONS APPLICABLE TO MERGERS AND LINE ABANDONMENTS

In the past numerous attempts have been made to protect displaced and unemployed railway workers. Abandonments of branch lines and minor consolidations have provoked union leaders to demand some form of protection.

The problem of protection for railroad employees appeared just after the beginning of the twentieth century. Carriers sometimes paid relocation allowances to employees who had to change positions. With the advent of

the 1920's, huge merger plans for railroads were devised. While most of them did not materialize at that time, these merger schemes alerted labor to the implications that consolidations may have on their numbers. Labor gave the matter much consideration and formed its own protective schemes to safeguard the interests of railway workers.¹⁴

Formal recognition of the adverse affects of a decline in railway employment was manifested in the passage of the Emergency Railroad Transportation Act of 1933. Although this act recognized the desirability of avoiding unnecessary duplications of facilities, it also provided for a job freeze to protect employees who might be adversely affected by the act.¹⁵ This provision was an outgrowth of New Deal legislation to maintain employment.

Before the expiration of the Emergency Railroad Transportation Act in 1936, efforts were made to obtain even greater statutory protection. One bill that was sponsored by railway labor representatives, the Wheeler-Crosser bill, gained considerable congressional support. Under the provisions of the Wheeler-Crosser bill, an Adjustment Board would be set up to investigate all railroad mergers and consolidations. This Board would be comprised of an equal number of management and union representatives with an I.C.C. member serving as chairman. It would be the duty of the Board to see that displaced personnel are given "comparable employment under no less favorable conditions of employment." A worker who lost his job because of a merger could receive payments of not less than

¹⁴U. S., Presidential Railroad Commission, Studies Relating to Railroad Operating Employees (Washington: U. S. Government Printing Office, 1962), p. 113.

¹⁵Ibid., p. 126.

two-thirds of his previous earnings with no maximum benefit period specified. Provisions were made for the Board to determine what constituted a just relocation allowance.¹⁶

While Congress was debating the Wheeler-Crosser bill, labor and management were negotiating their own agreement. Management felt that the protective conditions of the bill were too broad in nature. On the other hand labor leaders doubted the constitutionality of the bill. For these reasons both parties hoped to arrive at a mutual understanding. The precedent setting Washington Agreement of 1936 ensued from these negotiations. This product of collective bargaining was approved by 85 percent of the railroads and 21 labor organizations.¹⁷ It provided protection for employees adversely affected by mergers between two or more carriers.

Washington Agreement of 1936

The terms of the Washington Agreement stipulated that an employee deprived of his job resulting from a consolidation or merger may draw compensation equal to 60 percent of his prior years' earnings for a period up to five years in duration, depending on his earnings.¹⁸ No benefits would be paid to unemployed workers with less than one years' service. The benefit period would be 6 months long for a man

¹⁶New York Times, March 5, 1936, p. 1.

¹⁷U. S. Presidential Railroad Commission, Studies Relating to Railroad Operating Employees, p. 127.

¹⁸Emery Troxel, Economics of Transport (New York: Rinehart and Co., 1955), p. 580.

with at least one year of service, 12 months long for 2 years' service, 18 months for 3 years' service, 36 months for 5 years' service, 48 months for 10 years' service, and 60 months for 15 years' service.¹⁹ Therefore, a worker with a base years' earnings of \$1200 could collect \$60 a month for a period of 6 to 60 months if he worked at least one year prior to his dismissal.

If the employee chooses, he may receive a lump-sum settlement. A displaced employee could claim an allowance equal to the difference between his original and new earnings for a five year period if he had 15 years' of service. Under the agreement provisions were made for reimbursing employees for relocation expenses, including costs of transportation, losses on the sale of a home, and moving costs. Such fringe benefits as free transportation, pensions, hospitalization, and relief would continue throughout the protective period.²⁰

Transportation Act of 1940

Due to the great financial stresses in the railroad industry toward the end of the 1930's, Congress formed the Committee of Six to investigate the situation. This committee, which was composed of three labor and three management representatives, participated in hearings leading to the Transportation Act of 1940. Section 5(2)(f) of the Transportation Act of 1940, permitted the Interstate Commerce Commission (I.C.C.) to approve mergers or consolidations

¹⁹U. S. Intercontinental Railroad Commission, Studies Relating to Railroad Operating Employees, p. 175.

²⁰Emery Troxel, op. cit., p. 580.

...provided that during the period of 4 years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment....²¹

The above clause required the I.C.C. to give some weight to employee interests when determining whether or not to sanction a consolidation or merger. However, if labor and management can arrive at a mutually acceptable solution regarding adversely affected workers through collective bargaining, the I.C.C. will accept the agreement without prescribing its own protective terms.

Since the enactment of the Transportation Act of 1940, the I.C.C. has shown considerable interest in safeguarding the welfare of unemployed and displaced employees. It should be remembered that the jurisdiction of the I.C.C. applies only under conditions where lines are discontinued or consolidated. The conditions of protection specified in the Washington Agreement of 1936 and in I.C.C. decisions are not binding on the parties if the workforce is reduced due to declines in business, technological changes, work rules, changes, or other reasons. Railway unions are attempting to make the I.C.C. responsible for determining the protective conditions when a train discontinuance is sanctioned. In the remainder of this section, a history of protection plans will be reviewed.

Oklahoma Conditions

The I.C.C. did not find any evidence of employees being adversely affected by consolidations during the first few years after the passage

²¹U. S., Presidential Railroad Commission, Studies Related to Railroad Operating Employees, p. 114.

of the Transportation Act of 1940. In 1944, the Oklahoma Railroad petitioned the I.C.C. for approval to abandon its lines.²² The Atchison, Topeka, and Santa Fe Railroad and the Chicago, Rock Island, and Pacific Railroad proposed to take over operations on the lines of the Oklahoma. The Railway Labor Executives' Association opposed the transaction, arguing that some employees would be adversely affected. On May 17, 1944, the Interstate Commerce Commission approved the application for abandonment and consolidation and prescribed the protective conditions to be utilized. These conditions differed significantly in certain respects from those of the Washington Agreement although there existed many similarities in others.

Under the Oklahoma conditions, a displaced employee who had to accept a lower paying job would receive a monthly sum in addition to his regular earnings equal to the difference between his original and new monthly earnings, provided he properly exercised his existing seniority rights.²³ The protective period would last four years from the date of the I.C.C. order. This differed from the Washington Agreement, in that under the latter employees could receive compensation for a period up to five years after they were dismissed, instead of a period of only four years from the date of the order.

If an employee is dismissed and cannot obtain employment with his existing seniority rights, he is eligible for monthly compensation equal

²²U. S., Interstate Commerce Commission, Decisions of the Interstate Commerce Commission of the United States (Washington: U. S. Government Printing Office, 1944), 257 I.C.C. 177.

²³In order for a worker to receive displacement or unemployment benefits, he must have attempted to retain employment in his seniority district. That is, if he can displace a man with fewer seniority rights, he is expected to do so.

to one-twelfth of the compensation received by him in the twelve months preceding his dismissal. These benefits could be received only during the four year protective period. Thus the maximum benefit provided by the Oklahoma conditions is 100 percent of earnings throughout the four year period. Suppose a worker lost his job and was eligible to receive compensation under the Oklahoma conditions. If he earned \$5000 during the year preceding his dismissal he could receive this same sum for four years after his employment was terminated. However, if the worker was newly hired and received only \$900 over the preceding three months, he could continue to receive \$900 a year (\$75 a month) over the four year period after his dismissal.

The Washington Agreement provided for maximum benefits equal to 60 percent of earnings ranging from six months compensation for one to two years of service to 60 months compensation for workers with more than 15 years of service. The Washington Agreement provided for a 60 day lump-sum payment for an employee with less than one year of service. Under the Washington Agreement only other railroad compensation would be subtracted from benefits.²⁴ Under the Oklahoma conditions all compensation received from other sources, including earnings, would be deducted from the benefits.

The provisions of the Oklahoma plan regarding relocation are similar to those of the Washington Agreement. An employee who must move because of employment opportunities elsewhere on the railroad can be reimbursed for all expenses of moving, including pay for working time lost up to

²⁴U. S., Presidential Railroad Commission, Studies Relating to Railroad Operating Employees, p. 116.

two days. Also included are benefits for losses on the sale of homes and financial benefits to settle for lease cancellations.

The Oklahoma conditions made no provision for lump-sum separation allowances. On the other hand, an employee could leave the railroad industry with an allowance ranging from five days' to one years' pay under the Washington Agreement, depending on seniority.

Under both plans fringe benefits such as free transportation, hospitalization and pension plans remain available for adversely affected workers. Both plans stated that employees must use their seniority rights to retain employment if they are able to do so. Arbitration clauses were inserted to settle disputes in each agreement. If a controversy involving the interpretation of the provisions of these plans arose, either party could refer the dispute to an arbitration committee, provided that the parties could not reach a mutual agreement within a 30-day period of time.

It is difficult to determine which plan provided the best benefits to the workers involved. The Washington Agreement provided protection for a longer period of time, five years maximum compared to four years in the Oklahoma decision, but the Oklahoma conditions provided larger payments, 100 percent as against 60 percent in the Washington Agreement.

Burlington Conditions

On November 1, 1944, about six months after the I.C.C. rendered the Oklahoma decision, the Chicago, Burlington, and Quincy Railroad petitioned the I.C.C. to approve the abandonment of a small branch line.²⁵ The Railway

²⁵257 I.C.C. 700 (1944).

Labor Executives' Association opposed the abandonment, arguing that it would have adverse effects on the workers.

The I.C.C. certified the abandonment on the conditions that the employee's interests be protected by measures similar to those prescribed in the Oklahoma case. The Burlington conditions are significant in that they represent an extension of the Oklahoma conditions to an abandonment situation. In the Oklahoma case the Rock Island and Santa Fe Railroads asked to take over the abandoned lines, while in the Burlington case the abandoned tracks would be removed completely.

Northwestern Conditions

On April 12, 1946, the Chicago and Northwestern Railroad sought to merge the properties of the Escanaba, Iron Mountain and Western Railway into its own system.²⁶ Since the C & NW was operating the Escanaba at the time of the merger petition, no immediate adverse affects on employees were foreseen. Nevertheless, the Railway Labor Executives' Association intervened, fearing that secondary affects of the merger might eventually be detrimental to employee's interests.

The I.C.C. approved the proposed merger. However, it also provided a broader interpretation to section 5(2)(f). Although no immediate consequences of the merger appeared to disrupt jobs, the I.C.C. still stated that an abolishment of positions within the four year period from the date of the merger due to the merger must be accompanied by protection for the employees affected, that is just and reasonable. If the parties

²⁶261 I.C.C. 672 (1946).

could not determine what constituted just and reasonable protection, the I.C.C. would prescribe the conditions.

New Orleans Conditions

In a 1948 decision the I.C.C. approved the construction of a central passenger terminal in New Orleans in place of numerous smaller depots.²⁷ Also approved was the construction of lines to be jointly used by railroads using the terminal and the abandonment of lines leading to the old depots. This resulted in the loss of over 1043 jobs of which 680 were absorbed in operating and maintaining the new passenger terminal. The unemployed and displaced workers were partially protected by the Oklahoma conditions, which were applied to this case. Labor leaders felt that the Oklahoma conditions were inadequate. The four year protective period began on the date of the I.C.C. order and was to expire on May 17, 1952. One thousand and seven employees would not be affected by the change until the new depot was completed in 1953. Nevertheless, they could not receive benefits after May 17, 1952. The I.C.C. interpreted section 5(2)(f) to restrict the duration of the benefit period to that date which is four years after the order is issued. By commencing the protective period for a four year period of time beginning with the dismissal or displacement of an employee, the I.C.C. felt that it would be overstepping its delegated authority. Therefore, 1007 of the 1043 affected employees would receive no benefits under the conditions prescribed.

The Railway Labor Executives' Association opposed the I.C.C. order

²⁷267 I.C.C. 763 (1948).

in the courts. When the case eventually reached the Supreme Court, the Court ruled that the I.C.C. is not restricted in prescribing protective conditions to a four year period beginning on the date of the I.C.C. order.²⁸ Therefore, the labor leaders attempted to negotiate a new agreement with the carriers involved. Having failed, the union leaders asked the I.C.C. to reopen the New Orleans Passenger Terminal Case of 1948 and extend the protective conditions.

In a reconsideration of the case, the I.C.C. then decided to superimpose the conditions of the Washington Agreement upon those of the Oklahoma conditions.²⁹ Accordingly, employees received protection for the period from which they were adversely affected prior to May 17, 1952, under the Oklahoma conditions (four years from the effective date of the order of approval). If any employee would have received more benefits under the Washington Agreement after the time he was first adversely affected, he could continue to receive benefits under the provisions of the Washington Agreement until the total compensatory benefits paid equal the maximum that is allowed under the Washington Agreement. Any amount that the employee earned from employment or unemployment benefits would be deducted. Suppose a worker with 20 years seniority earned \$6000 from May 17, 1950 to May 17, 1951. If he was laid off on May 17, 1951, under conditions covered in the New Orleans decision, he could receive \$6000 up to May 17, 1952 (the date the Oklahoma conditions expire). However, had he been covered by the Washington Agreement, he could have received

²⁸ Railway Labor Executives' Association v. United States, 339 U. S. 142 (1950).

²⁹ 282 I.C.C. 271 (1952).

a total of \$18,000 over a five year period (\$300 a month). Under the New Orleans conditions, he can continue to collect \$300 a month until his total benefits reach \$18,000. Of this \$18,000, \$6,000 would be received prior to May 17, 1952 and \$12,000 after that date.

In other words, under the New Orleans conditions employees could receive as a minimum the protection afforded by the Oklahoma conditions. However, if this payment is less than what could have been received under the Washington Agreement, they are entitled to the remaining benefits that could have been received under the latter.

Since 1952, the I.C.C. has applied either the Washington, Oklahoma, Burlington, Northwestern, or New Orleans conditions to all mergers and abandonments within its jurisdiction. At the present time these programs are still the basis of the I.C.C. protective provisions.

RAILWAY UNEMPLOYMENT COMPENSATION

The only form of protection presently available to nearly all unemployed railway workers is unemployment compensation, as provided under the Railroad Retirement and Unemployment Insurance Acts. To finance this unemployment compensation program, railroad companies must pay a sum to the Railroad Retirement Board ranging from 1.5 to 3.75 percent of each employee's earnings, depending on the number of men out of work. The carrier's assessment will not be paid on earnings of employees in excess of \$450 a month (\$400 before October 1963). In 1963 the employer assessment was temporarily raised to four percent to alleviate a deficit. This was a temporary measure, meant to apply only in the year 1963.

To be eligible for benefits an employee must have earned at least

\$750 in the base year as well as having a total of seven months service with a railroad company. During the period the employee is jobless, he must receive no wages, salary, pay for time lost, vacation pay or holiday pay. He must be ready, able, and willing to work. Furthermore, he must register with a claims agent, usually weekly.³⁰

The rate at which a railway worker may receive benefits is determined by his base year earnings or by his rate of pay for his last railroad job in the base year. If an employee's earnings amounted to \$4,000 or more he is eligible to collect a daily benefit of \$10.20, up to a maximum of \$102 for a two week period. An employee receiving less than \$4,000 is eligible for reduced benefits.

Normal unemployment benefits may be paid for a maximum of 130 days in a benefit year. However, the total amount paid cannot exceed the employee's base year earnings. This program provides benefits for an unemployment period up to 26 weeks long, if continuous.

An employee with at least ten years of service may qualify for extended benefits upon the exhaustion of his normal benefits. If an unemployed railway worker with ten to fourteen years of service is eligible for this protection, he may receive up to 65 days' additional benefits in seven successive fourteen day registration periods. An employee with fifteen or more years of service can claim 130 days' additional benefits in thirteen successive fourteen day registration periods. If an unemployed railway worker exhausted his benefits for the

³⁰ U. S., Railroad Retirement Board. The Monthly Review, XXIV, (June, 1963), p. 11. Most of the material found in this section was taken from this source.

present year, he may be eligible to collect benefits for the coming year. This applies only if the worker exhausted his benefits in the current year, has at least ten years of seniority, and would otherwise be eligible to collect benefits in the next year.

Under the Railroad Retirement and Unemployment Insurance Act, the Railroad Retirement Board possesses the authority to operate a free placement service to assist unemployed railroad workers find new jobs. This service enabled 43,000 workers to obtain employment in 1961 and 1962 of which 18,000 transferred to positions outside the railroad industry. Under another plan, the partnership transfer program, railway management, railway labor and the Railroad Retirement Board cooperate in arranging job transfers for experienced employees who otherwise might be unemployed. This program aided 6,700 employees in a two year period from January 1961 to December 1962.

Under the Manpower Development and Training Act, the Board may refer unemployed railway workers to state unemployment offices for vocational training. From July 1962 to May 1963, 140 railway men participated in this program.

Other than the unemployment insurance available under the Railroad Retirement and Unemployment Insurance Act, there is no comprehensive protective program available to all workers. This program provides benefits which undoubtedly assist workers in meeting their immediate needs. However, it appears to be inadequate in protecting workers for long periods between jobs. There exists no comprehensive program designed to reimburse displaced workers who are compelled to accept less desirable positions.

As mentioned previously the Interstate Commerce Commission is obliged to seek an equitable arrangement for employees adversely affected by mergers or line abandonments. These conditions are much more liberal than those administered by the Railroad Retirement Board.

PROTECTIVE PLANS THROUGH COLLECTIVE BARGAINING

The only protective programs other than unemployment insurance and I.C.C. settlements available for railroad workers are those arrived at by collective bargaining. These conditions often resemble those prescribed by the I.C.C.

On October 25, 1955, the Brotherhood of Railway Clerks and the Pennsylvania Railroad reached an agreement stating that displaced workers cannot suffer a reduction in pay until one year after their displacement. A furloughed employee could collect one years' pay if he lacked seniority to obtain another position. This applied only to employees with at least one full year of service. A relocation allowance was also provided similar to that in the Washington Agreement.³¹

The Chesapeake and Ohio Railroad and the Brotherhood of Railroad Clerks negotiated an agreement on February 21, 1956, which adopted the protective conditions of the Washington Agreement in replacing jobs by computers. Employee seniority was ruled effective in the establishment of a new computer center in Cleveland.

In February 1957, the New York Central consolidated the two divisional

³¹ U. S., Presidential Railroad Commission, Studies Relating to Railroad Operating Employees, pp. 183-191. Unless otherwise specified, cases in this section may be found in this source.

superintendent's offices in Erie, Pennsylvania and Cleveland, Ohio. The Brotherhood of Railway Clerks and the New York Central agreed that the railroad would retain all the adversely affected employees for a three year period of continuous employment with no reduction in pay. Relocation benefits would be paid similar to those of the Washington Agreement. One paragraph in the agreement stated that the railroad would advance funds to the Erie division employees to take care of their expenses directly caused by the transfer. These funds would be paid back by later payroll deductions.

The Illinois Central mechanized its accounting procedures in its Chicago office during June 1957. An agreement with the Brotherhood of Railway Clerks provided maximum benefits of 60 percent of earnings for unemployed workers up to 18 months after dismissal. A displaced employee would not experience a pay reduction for 18 months. Also stipulated was that the carrier must give 90 days' written notice before abolishing any position.

An agreement between the Erie Railroad and the clerks allowed an unemployed or displaced employee to collect his original wages for a one year time period beginning on January 15, 1958, and ending one year later. Any amount an employee receives from other employment or unemployment compensation would be deducted.

The Union Pacific Railroad and the clerks decided to follow a plan of normal attrition with which to reduce the size of the workforce, providing that the employee uses his seniority to transfer positions if possible. This protection would only be in effect for a four year period after the employee was affected and would not apply to an employee who does not have four years' service. An employee who accepted a lower paying

position would receive his original pay for a four year period. Under the attrition plan the employee covered may be required to perform other work. If he is absent it would not be necessary for the company to fill his position.

The Baltimore and Ohio and the Transport Workers of America negotiated an agreement concerning the abolishment of the position, oiler-firemen, on December 2, 1960. A laid-off employee could collect dismissal pay for a period of up to 50 weeks, depending upon his years of service. This pay would be equal to his previous earnings. An oiler-fireman with more than 20 years of service may choose to keep his position. A compulsory retirement age was established at 70 years (on railroads other than the B & O, the age was 65).

The Southern Pacific Railroad and the Order of Railroad Telegraphers devised a modified attrition plan on October, 1961. The agreement allowed the railroad to leave positions vacant when the employees filling them die, retire, resign, are promoted or are dismissed for cause, providing this figure does not exceed two percent per year. This does not apply to job abolishments due to the installation of centralized traffic control or when the I.C.C. has jurisdiction over a situation. Terms of the Washington Agreement would apply to employees dismissed subsequent to September 1961. The parties also agreed to study and devise a retraining program.

In the Spring of 1963, the Brotherhood of Railroad Clerks reached an accord with the Southern Pacific Railroad. According to mediator Francis A. O'Neill, Jr., this was the first system of full normal attrition in the railroad industry. This agreement, covering 7,000 men, would enable the railroad to abolish 350 to 400 jobs a year or about 5 to 6 percent of

the employees covered. From the point of view of the Southern Pacific, this agreement is more advantageous than that with the telegraphers since the former restricted the attrition figure to two percent of a certain base figure. Under the conditions of this plan, the total number of the job abolishments would rest solely on attrition. Then if a computer operator died, the railroad could move another man into the position, thus having credit for one position and could abolish one obsolete position. A formula was devised to allow the Southern Pacific to drop additional positions in case of a business slump. If business drops more than five percent, then the carrier can reduce employment by the amount of the drop minus five percent.³² Therefore, if business declined nine percent, an additional four percent of jobs could be abolished.

In the Fall of 1962, a dispute between the Order of Railway Telegraphers and the Chicago and Northwestern resulted in a 30 day strike. The work stoppage ended with an agreement to submit unresolved issues to binding arbitration. The award obliged the C & NW to give 90 days' notice before abolishing a position. The carrier's right to abolish jobs was reaffirmed. A union proposal to submit to arbitration the question of job elimination when a discrepancy arose was rejected. Conditions similar to those of the Washington Agreement were provided to compensate employees for job losses.³³

It may be noted that the majority of the collective bargaining agreements mentioned above are similar to the conditions imposed by the I.C.C.

³²"When Automation Comes and Workers Stay On," U.S. News and World Report, April 1, 1963, pp. 88-89.

³³"Developments in Industrial Relations," Monthly Labor Review (November 1962), p. 1280.

However, few of them have protective terms that are as liberal as those prescribed by the I.C.C. In recent years increasing emphasis has been placed on attrition as a protective measure. This was used in the B & O case and in the two Southern Pacific cases. In the Southern Pacific case involving the telegraphers, the railroad is obliged to hire new employees for obsolete positions if the attrition rate exceeds two percent. It is likely that railway unions will place more emphasis on collective bargaining agreements in the future to insure adequate protective conditions. This is due to the fact that significant progress has been realized in installing protective programs in recent times and that many more jobs are apt to disappear in coming years.

PROTECTIVE CONDITIONS DESIGNED TO EXPEDITE
THE ELIMINATION OF FIREMEN

In recent years numerous debates and studies have been made concerning the need for firemen-helpers on diesel engines. A careful analysis was conducted by a presidential railroad commission between November 1960 and February 1962. It was the opinion of the Commission that firemen-helpers serve no useful or necessary purpose in riding on diesel engines. Along with the recommendation to eliminate the firemen, the Commission made a careful study of employee protective plans. The opinions of the Commissioners will be reviewed in this section, as well as those of labor, management, and the arbitration board established by Congress on August 28, 1963.

Suggestions of Labor

Organized labor proposed a threefold program of protection for adversely affected operating employees:

1. Limit the number of job reductions to normal attrition, but not in excess of five percent of June 1960 employment.
2. Extend a five year displacement allowance to employees affected within five years of the date of change, based on the highest earnings of the previous five years.
3. Reimbursement for all expenses of moving.³⁴

It is the aspiration of labor to provide a job freeze for present employees, guaranteed full time annual employment for most employees and income protection. These proposals would apply where management has the unilateral right to reduce the number of jobs as well as in situations where job reductions call for prior negotiations. These rules would apply to job reductions due to technological changes, business reductions, or any other cause.

Suggestions of Management

On the other hand, management wants an unrestricted right to abolish jobs without prior negotiations. Management feels that job reductions due to advancing technologies are simply hazards associated with working in this age. Management is hesitant to condone or accept protective conditions beyond those already existing through unemployment compensation programs.³⁵

³⁴U.S., Presidential Railroad Commission, Report of the Presidential Railroad Commissions, pp. 68-70.

³⁵Ibid., p. 72.

Suggestions of the Presidential Railroad Commission

After the Presidential Railroad Commission presented the views of railway labor and railway management, it proceeded to present its own views.³⁶ Neither would it accept a moratorium on progress nor a unilateral freedom of management to make changes without adequate compensation. The Commission did not endorse programs mixing change plus attrition. Such programs result in employees devoting their efforts to tasks that need not be performed. This type of employment is morally detrimental to the employee whose skill is not needed. Attrition also deprives our nation of useful services which could be performed were these men retrained and again made productive. Furthermore, attrition requires time. With one change following another at a rapid pace, the attrition process could retard progress substantially. Therefore, the Commission concluded that attrition is an inadequate solution.

The Commission then offered a criticism of recommendations for changes plus a reduction in hours. Our nation needs greater outputs of goods and services; this cannot be achieved by a reduction in hours. A shortening of the workweek could very well lead to a reduced output which would not tend to create a need for more jobs. Our national standards of living cannot be raised by decreasing our output. The Commission then argued that shortening hours in a specific industry would result in an inequity, which would solve no problem.

The Commission proceeded to endorse a program it termed "progress plus protection." Provided management assured employees of a specified

³⁶Ibid., pp. 73-76. The information appearing in this subsection was chiefly taken from this source.

amount of protection, the Commission felt it should be free to introduce technological changes without limitation. This protection should result in management giving reasonable notice of its intentions to abolish positions. The parties should negotiate rules concerning the proposed change if one party desires to change the rules in effect. If no agreement is reached in 60 days, either party may refer the issue to binding arbitration. Pending the decision of an arbitration tribunal, the change shall not be introduced. Every employee should be reimbursed for the amounts specified in the Washington Agreement, including the option to choose a lump-sum separation allowance. The carrier shall pay 75 percent of the tuition bill for the employee to be retrained over a two year period. Finally, preferential hiring would be given to men on a furlough.

The suggestions of the Presidential Railway Commission were unacceptable to railroad labor organizations. The carriers continued threatening to abolish the jobs of the fireman-helpers. In turn, the operating unions threatened to strike upon the introduction of new work rules. After numerous threats and frantic efforts to avoid a work stoppage, Congress passed a bill on August 28, 1963, providing for binding arbitration. The arbitration board presented its award on November 26, 1963.

Arbitration Award of November 26, 1963

Of the 40,000 diesel locomotive firemen's jobs, the arbitration panel said 90 percent were unnecessary in freight and yard service. In an award which would remain effective two years, the panel recommended an attrition plan, designed to retain the majority of firemen until they resign, die, retire, are dismissed for cause, or are offered a suitable

job elsewhere.

February 25, 1964, the day the carriers could have introduced the new work rules, passed by without a crisis. Until the validity of the arbitration award is ascertained, the railroads do not seem likely to initiate sweeping changes. As of March 20, 1964, the unions sustained defeats in a U. S. District Court and in the Court of Appeals in attempts to have the law invalidated. However, the unions intend to test the constitutionality of the law before the Supreme Court.³⁷

The award specified that firemen with ten or more years seniority must be provided with jobs until attrition leaves their positions vacant. This provision involves 26,000 men. A fireman with less than ten but more than two years service will continue to work as a fireman unless the railroad provides suitable employment elsewhere. An offer of a job elsewhere would entail full moving expenses and transferral of seniority rights. If such an employee experiences a pay reduction, the railroad must guarantee his original compensation for a five year period. This would affect 10,500 men with two to ten years seniority. Employees with less than two years seniority and irregular employees may be laid off permanently with varying severance allowances. This affects 3,500 men.

The arbitration panel reverted other issues involving work rules changes back to labor and management for renewed collective bargaining efforts. These include the extension of train crews beyond present division points, greater flexibility in using road crews for yard work, manning of self-propelled machines, and revision of the complex pay

³⁷"Rails Poised for Action," Railway Age, March 2, 1964.

structure.³⁸

CONCLUSION

Employee protective programs are assuming more importance in the railroad industry. Because of imminent rules changes, advancing technologies, and mergers, it is probable that railroad employment figures will continue to register declines. As labor unions are coming to recognize the magnitude of this situation, they press harder to establish protective conditions to maintain the adversely affected employee's economic security. Varying programs that are now established and suggested programs differ significantly in the scope and magnitude of their provisions.

Protective programs specifying a system of unrestricted normal attrition do provide a great deal of security to workers holding unnecessary positions. However, the Presidential Railroad Commission may well be correct in stating that such a program stifles productivity. Benefits of technological progress may not be realized if the cost of initiating the change is high. The railway telegraphers in negotiating a contract with the Southern Pacific in 1961, demanded that a system of attrition be adopted with a maximum of two percent of the number of employees in a base year being dismissed in that year. Such an agreement could even compel the carrier to hire new men to fill obsolete positions.

However, under certain situations a program of attrition might be acceptable. This would be true if the attrition process proceeded at a rapid rate. Such a situation could occur if the men holding the obsolete

³⁸New York Times, November 27, 1963, pp. 1 and 26.

positions are old and about to retire. It could also occur if there existed a possibility of moving the unneeded men to new jobs in the near future. Nevertheless, this would still mean that workers must spend some of their energies performing unneeded tasks. The question arises whether they might be equally well off receiving unemployment benefits and being out looking for other employment, whether it be temporary or permanent.

The arbitration award of November 1963, emphasized attrition as an answer to the firemen problem. It is the opinion of the writer of this paper that the Presidential Railway Commission provided a better solution. While the arbitration award seemed to favor the firemen riding in the diesel cab until attrition occurs, the Commission suggested dismissing the unnecessary workers and compensating them under the conditions set forth in the Washington Agreement. Even more significant is the fact that the Commission suggested retraining, paid for chiefly by the carrier. Under this program an unemployed worker could receive compensation and prepare himself for useful work rather than engage in futile tasks for the rest of his life. The program suggested by the Commission not only allows the adversely affected employee the feeling that he will eventually put his abilities to useful service, but it allows society to benefit from the output of the worker. Retraining programs probably have not been given proper consideration in the controversy over protective conditions. Retraining is frequently criticized as being a costly solution but it may be less costly than attrition.

According to Canadian experiences, attrition involving firemen has been slow. In May 1958, firemen's jobs were to be abandoned by an attrition

plan on the Canadian Pacific and shortly thereafter on the Canadian National. In three years 21 percent of the firemen's jobs were vacated on the Canadian Pacific and 12 percent in two years on the Canadian National.³⁹ This plan represents much wasted labor and needless expenditures on wages.

A reduction in hours does not seem to be a satisfactory solution to the problem. Already railroads are suffering financially due to increased competition. A reduction in the hours of the workweek could lead to increased costs and further losses to competitors. Besides, the present work rules are based on a situation of many years ago; numerous men work extremely short hours for a days' pay in the operating occupations. It is doubtful that a reduction in hours would even benefit the employees if higher costs result in additional business losses and further employment reductions in the railroad industry.

Displacement allowances are helpful in compensating employees who are forced to undergo pay reductions through no fault of their own. It is difficult to specify the proper period of time during which these benefits should be received.

Relocation benefits have been in widespread use. Even before the Washington Agreement of 1936, railroads have been known to grant such benefits to financially hard-pressed employees. Some sort of relocation allowance has appeared in the majority of cases cited in this report.

In summary it may be noted that protective plans for railroad

³⁹ Industrial Relations Research Association, Comparative Canadian - U.S. Industrial Relations, Proceedings of the Spring Meeting (Montreal, Canada, 1963). pp. 696-697.

workers have increased in importance in recent years. Interstate Commerce Commission settlements have been more liberal as exemplified by the New Orleans Conditions. Collective bargaining agreements first afforded little protection and are now experimenting with programs of normal attrition. Management is realizing that protective conditions are a necessary cost of introducing changes. Labor hopes to employ protective conditions to safeguard employee's economic security in the face of rapid technological advances and job reductions. The problem faced by both parties concerns the extent of the protective conditions to be employed. On one hand, these measures should maintain the economic security of workers, while on the other, they should not be so extensive as to curtail the benefits of a low-cost, efficient transportation system.

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PROTECTIVE PROGRAMS FOR UNEMPLOYED AND
DISPLACED RAILROAD EMPLOYEES

by

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National attention has been focused upon maintaining the economic security of the unemployed and displaced railroad worker. It is the purpose of my report to review the development and breadth of current protective programs.

Studies of the Presidential Railroad Commission which reported to President Kennedy in February 1962 were utilized as an important source for the report. Precedent-setting cases involving the use of protective plans were reviewed from the finance dockets of the Interstate Commerce Commission (I.C.C.). Useful statistics and opinions were supplied by the Association of American Railroads and the Railway Labor Executives' Association. Additional information was taken from various journal articles.

The first significant protective plans were formulated to safeguard the interests of employees who were adversely affected by mergers or consolidations. One of these programs was the Washington Agreement of 1936. This collective bargaining agreement has served as an important basis for nearly all protective programs. The Transportation Act of 1940 has invested the I.C.C. with the responsibility of safeguarding the interests of employees when it sanctioned mergers or consolidations.

In recent years protective programs have become more extensive in coverage and have received wider acceptance by labor and management. Interstate Commerce Commission settlements have become more liberal as exemplified by the New Orleans case. Collective bargaining agreements at first afforded little protection but are now experimenting with programs of attrition. Management is beginning to recognize that protective programs are a necessary cost of introducing labor changes, and

labor hopes to utilize protective programs to safeguard the welfare of employees in the face of continued job reductions.

The report concluded with a brief analysis of current proposals to improve protective programs. A comparison was made between programs consisting of unemployment benefits and more recent proposals which emphasize attrition. No ideal solution to the problem of employee welfare is evident. Unions contend that protective programs should maintain the economic security of unemployed and displaced employees, while management states that they should not be so extensive as to curtail the benefits of a low-cost efficient transportation system.