

MR. SCHOLAR

Transport

cc: Mr. Hoskyns
Mr. Ingham
Mr. Duguid

ASLEF DISPUTE

We had a word this morning about the way in which Sir Peter Parker has conveyed a rather tougher line in response to the McCarthy report than might have been expected in view of the line Ministers yesterday asked Mr. Howell to convey to him. I have had a word with the Department of Transport. I am told that Peter Parker read over to Peter Baldwin the text of the proposed BR press notice, which seemed to DoT to meet Ministers' concern that BR should avoid putting ASLEF directly on the spot at this stage. The key sentence said that the Board would accept the Inquiry recommendations if ACAS received assurances from ASLEF about flexible rostering in acceptable terms. Thus it sought not to challenge ASLEF, but to seek ACAS help in clarifying the report. The press have, of course, interpreted this as being close to rejection of the Inquiry's recommendation that the 3% should be paid before the commitment is made to flexible rostering, but that may be no bad thing.

Mr. Howell spoke again to Peter Parker later last night, and it seems that BR are still inclined to go down the path of seeking some assurance on ASLEF's willingness to negotiate away from the eight hour day, and are not very keen on paying the 3% provisionally, which the NUR might not support. But all the four possible compromises indicated in my note of yesterday's date are still starters.

We may not know much by 3.00 p.m. this afternoon of what has been going on at ACAS, although we should of course know whether ASLEF has agreed to participate in the talks.*

We seemed to be getting to the stage yesterday of detailed textual analysis of the various documents; those concerned, possibly also including the Prime Minister, may like to have the enclosed copies of the August understandings.

17 February 1982

J.

* They now have

ADVISORY, CONCILIATION AND ARBITRATION SERVICE

1. As a result of discussions held under the auspices of ACAS on 18/19/20 August 1981, the RSNC has reached an understanding on pay. Stemming from Paragraph 190 of RSNT Decision No 75 a separate understanding has been reached on productivity. Copies of these understandings are attached.
2. In the event of there being any problem regarding the application of either of the two understandings the RSNC may request the further assistance of ACAS.
3. The three unions (ASLEF, NUR and TSSA) will take immediate steps to recommend these understandings for ratification by their respective executives, following which the ASLEF and NUR will countermand their decisions to call out their members as from 31 August 1981.

Signed on behalf of:

British Rail Board

B. A. Rose

National Union of Railwaymen

Barry Burgess

Associated Society of
Locomotive Engineers and
Firemen

Ray Buckton

20 August 1981

Transport Salaried Staffs'
Association

UNDERSTANDING ON PAY

1. As a result of discussions held under the auspices of ACAS on 18/19/20 August the RSNC has agreed that the 1981 pay settlement should be on the following basis:

- (i) Rates of pay for all grades concerned shall be raised by 8% from 20 April 1981.
- (ii) A further increase of 3% on the rates prevailing on 19 April 1981 shall be paid to the same grades from 3 August 1981, the actual payment being made in the first pay period in January 1982.
- (iii) The minimum earnings level shall be raised by 15% from 20 April 1981.
- (iv) The principle of returning the London Allowance to the method of calculation proposed in Paragraph 191 (iv) of RSNC Decision 75 will be applied from 1 July 1981.

2. The introduction of the shorter working week provided for in Paragraph 9 of the 1980 Pay Agreement shall be deferred until 4 January 1982.

3. The constituent parties of the RSNC accept the comments set out in Paragraph 190 of RSNC Decision 75 regarding the continuation of negotiations on productivity issues and commit themselves to continue the progress that has already been made in the areas covered by Clauses 1(i), (ii), and (iii) of the 1980 Pay Agreement.

20 August 1981.

UNDERSTANDING ON PRODUCTIVITY

1. The RSNC agrees that the discussions on productivity which took place at Watford on 15/16 July shall be resumed as quickly as possible within the appropriate sections of the RSJC and the results reported back to the RSNC.

2. When those discussions are resumed they shall take place on the basis of the following points agreed by the RSNC as a result of discussions held under the auspices of ACAS on 18/19 August.

a. Open station concept

The parties accept the application in principle of this concept and agree that it will be possible to negotiate a specific agreement to introduce it. Negotiations shall be concluded on a basis for agreement by 31 October 1981.

b. Manning of passenger trains

It is accepted that the introduction of the Bedford-St Pancras electrification service in May 1982 presents the industry with the opportunity of a fundamental rethink of the whole concept of manning trains where modern stock is introduced into intensive commuter areas.

Without any preconceived conditions on either side discussions shall take place on the prototype system for the Bedford-St Pancras service.

c. Variable rostering hours within limits to be negotiated

Negotiations shall take place to establish variations to the rostering agreements with a view to introducing some flexibility around the 8-hour day, but without producing unreasonable variation in the length of each working day or week. These discussions shall be concluded by 31 October 1981.

d. Easement of conditions of single manning on traction units

Negotiations shall take place on the proposals relating to single manning conditions, on the understanding that provisions will have to be made for appropriate safety measure and that there should be no worsening of staff conditions. These discussions shall be concluded by 31 October 1981.

e. Manning of freight trains

There shall be an immediate joint examination with a view to establishing to the satisfaction of the parties the circumstances in which some freight trains could be operated without guards. Two or three pilot schemes shall if possible be ready for introduction by 1 January 1982.

f. The trainman concept

Major obstacles between the unions which have prevented progress in this area in the past are being resolved. The ASLEF and NUR undertake to enter into immediate negotiations with the Board with a view if possible to concluding an agreement which would provide recruitment, training and promotion through the grade of trainman to driver or to other appropriate grades. The negotiations shall be concluded by 1 January 1982.

3. It is reaffirmed that specific rewards will be negotiated for those staff whose responsibilities are directly affected under these agreements.

20 August 1981

PRESS STATEMENT

As a result of discussions held under the auspices of ACAS on 18/19/20 August the Railway Staff National Council has reached an understanding on pay. Stemming from Paragraph 190 of Railway Staff National Tribunal Decision 75 a separate understanding has been reached on productivity.

Accordingly the three unions (ASLEF, NUR and TSSA) are taking immediate steps to consult their respective Executives.

AM had seen
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17 February 1982 12
Policy Unit

PRIME MINISTER

ASLEF

1. THE IMPORTANCE OF THE ISSUE

- 1.1 BRB originally said "Productivity must increase, or we can't pay the 3% or give BR a future". There is no way BR can avoid major restructuring and contraction if ASLEF-type behaviour continues, because the Government is not prepared to pour in more money. And, because of the attendant publicity, this dispute now has an exemplary effect - with implications for the pay round as a whole, and for our handling of the miners next autumn.
- 1.2 So BR cannot concede the 3% except by a policy of "ungraceful surrender", in which they publicly and explicitly abandon plans for the modernisation and electrification of the railways (analogous to Edwardes withdrawing the BL Corporate Plan, but not leading in the same way to liquidation).
- 1.3 Following this morning's press, public opinion would be hostile to acceptance by BR of the Inquiry's recommendations.

2. THE NATURE OF THE NEGOTIATIONS

- 2.1 ASLEF's position would be untenable, were it not for McCarthy. One has only to reverse the situation and imagine BRB demanding 7-9 hour rostering in return for an agreement to discuss the possibility of BRB at some time in the future paying a further 3%.
- 2.2 The argument that the pay and productivity agreements were not linked does not stand up. (Even McCarthy admits that one would not have been signed without the other.)

3. THERE IS NO WAY THROUGH FOR BRB, UNLESS THEY EXPOSE THE McCARTHY FUDGE

- 3.1 The greatest danger is that BRB start to slide down a route which is not consistent with their opening position. For example, they might agree (as they did before) to be bound by the McCarthy tribunal, provided ASLEF is bound. But their own position ought not to permit this. They could only suggest it if they were certain that McCarthy would not promise ASLEF everything they wanted, and if there appeared to be no other way forward.

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3.2

If BRB ask ASLEF for assurances that they will enter the discussions "in good faith" and "with a view to abandoning the 8-hour day", they can only get one of two answers:

- (i) Agreement (which means nothing, since the negotiation may still result in ASLEF's refusal to budge from the 8-hour day).
- (ii) Refusal (which produces immediate breakdown).

But BR could reasonably ask ASLEF to state unambiguously that they agree to move from a rigid 8-hour day.

3.3

Any strategy which tries to conceal the McCarthy fudge, rather than exposing it, leads inevitably either to continued re-runs of the events of recent weeks; or BRB surrender. The likelihood that the McCarthy proposal could lead to conclusions which were acceptable to BRB and consistent with BRB's original position, and were then accepted, as if binding, by ASLEF, are very low; and BRB cannot take the risk of being bound by conclusions which end up giving BRB nothing for their 3%. In short, we do not think the McCarthy report takes us any nearer settlement.

4. THE WAY FORWARD

4.1

So the choice is to accept the fudging approach, which means accepting that ASLEF and the 1919 mentality will dictate the future of British Rail; or to recognise that British Rail must be prepared for a prolonged strike in the attempt to undermine ASLEF's position irrevocably (but recognising that if it fails to do so it will have to settle for "ungraceful surrender"). In other words, the underlying truth of the situation is the surest guide to the right action. The strike would be about whether BR is to have an investment-led future or accelerated decline.

4.2

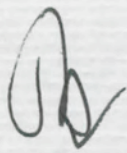
We think that Peter Parker should expose, totally, the muddle of the McCarthy proposals. We should tell him that the Government will back him if he tries to put the pressure on ASLEF by suggesting some form of conditionality. That could include the commitment to end the 8-hour day; or the payment of the 3% on a provisional basis; or anything else that occurs to him.

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4.3

So we think Ministers should decide:

- (i) Whether BR can avoid major contraction unless ASLEF agree to flexible rostering? If not -
- (ii) Whether they are prepared to take a rail strike, if necessary, and for how long it could be sustained. If so -
- (iii) What indications of Government support should be given to Peter Parker?



JOHN HOSKYNS

SECRET

for ~~the~~ Railway meeting

at 1500

17/2/82

C O N F I D E N T I A L

Mc CARTHY INQUIRY RECOMMENDATIONS

Status of Inquiry

The inquiry was set up by ACAS. The members are Lord McCarthy, Mr Chopper and Mr Doughty. These three between them constitute the Railway Staffs National Tribunal (RSNT), Lord McCarthy being appointed (and recently re-appointed by the Board, and Mr Doughty (ex-trade union) nominated by the unions.

2. The terms of reference of the inquiry were:-

"to consider the terms of the 1981 pay and productivity understandings ratified as agreements by the Railways Staffs National Council and, taking into account the agreement to introduce a 30-hour week, to make recommendations to resolve the differences over the payment of the further three per cent increase to footplate grades and over clause 'c' of the productivity understanding on flexible rostering and related matters."

The recommendations of the inquiry are not binding. BR were prepared to accept a binding inquiry, but ASLEF would not do so. Indeed, ASLEF refused to take part in the inquiry.

The McCarthy recommendations

3. The main points in the McCarthy recommendations are as follows:-

i. ASLEF should confirm its continued commitment to understandings of August 1981 - "negotiations shall take place to establish variations to the rostering agreements with a view to introducing some flexibility around the

8-hour day ..."

ii. A timetable is laid down for early and rapid negotiations within the established machinery on flexible rostering. If there is no agreement in the RSJC, the issue would be brought back to RSNT in mid-March. (The possibility of binding arbitration is mentioned, but in such a way as to make it difficult for BR to insist on this.)

iii. As soon as this procedure is agreed, ASLEF should call off industrial action.

iv. At the same time the Board should implement the additional 3% on pay.

v. The application of the shorter working week agreement would wait on the outcome of the dispute on flexible rostering.

Views of ACAS

It is known that ACAS are disappointed in the McCarthy report, especially the uncritical stance adopted towards ASLEF. However, they must try to build on the report, and the chairman is trying to get all the parties together today to secure agreement on the way forward.

Views of NUR and TSSA

Mr Weighell has said, "the parties should accept the recommendations. TSSA will no doubt follow suit."

Views of ASLEF

Not yet known. Will probably accept. If they cavil, or enter reservations, BR would be fully entitled to reject the recommendations, which depend on good faith.

Views of BR

Still considering. For them, the fundamental flaws in the report are

- a) it does not say that retaining the fixed 8 hour day is incompatible with introducing the 39 hour week at minimum cost
- b) it gives no guarantee that the eventual award of RSNT will be implemented; and meanwhile
- c) it gives away the 3% cord.

ISSUES FOR MINISTERS

1. If BR now reject the recommendations, and fight on, will the Government back them?
2. If BR seek to make conditions (eg the 3% is paid conditionally on the RSNT award being accepted, or the arbitration must be binding, or ASLEF must accept now the principle that arrangements like those negotiated with NUR would be applied, if RSNT so award) and ASLEF refuse, would the Government back BR them in rejecting the report?

ACAS is currently trying to secure the agreement of all parties to the following -:

~~To ask~~ "all parties to give unqualified acceptance of the report's recommendations and agreement to enter into negotiations without any predetermined condition or qualification about any relevant issue including the 8-hour day."

1) N.U.R. -

2) Ass. N.U.R. T.U.C. -
McCarty

3) Not regard letter as lost until end of tribunal.

PRESS NOTICE

RAILWAY DISPUTE

Report of ACAS Inquiry

The Committee of Inquiry into the Railway Dispute have today submitted their Report to the Chairman of ACAS.

After considering all the factors involved in the present serious and damaging dispute the Committee say in their report "We fully accept the need to make rapid progress to agreement on all remaining items in the productivity understanding, and to provide a framework of up-to-date agreements that are compatible with the operating requirements of a modern and efficient railway. But we feel that the best way out of the present problem is to find a means of utilising the established machinery, bearing in mind the need to avoid unnecessary delay and safeguard the interests and agreements of all the parties".

With this in mind they recommend in summary, the following:-

- "1. The ASLE&F should confirm its continued commitment to the understandings of August 1981 as endorsed by the RSNC - in specific terms sub-paragraph 2(c) of the productivity understanding and paragraph 2 of the understanding on pay.

2. The parties should agree to procedures for dealing with the way in which sub-paragraph 2(c) of the productivity understanding is to be applied to locomotive grades. This should take the following form:-
 - i. There should be a meeting of the RSJC (Loco) within seven days to consider the Board's proposals to implement sub-paragraph 2(c). Unless agreement is reached within seven days, or the RSJC (Loco) agrees to

extend the period, a failure to agree should be recorded at a meeting of the RSNC held within a further forty-eight hours.

ii. Unless, at the meeting of the RSNC, agreement is reached, or the RSNC agrees to extend the period, reference should be made to the RSNT. This reference should take preference over all other outstanding references, under conditions set out in paragraph 38(d) of the report.

iii. Unless there is agreement to extend the period of consultation by the RSJC (Loco) or the RSNC, the parties should agree to a hearing before the RSNT on one of the following dates:- March 15, 16, 19, 1982.

iv. Reference to the RSNT should be by the use of either Paragraph 65(a) or 65(b) of the Machinery. If it is not possible to secure agreement for the use of binding arbitration, the parties should agree to abide by the more customary procedure under Paragraph 65(b) of the Machinery.

v. The terms of reference for the RSNT should be as set out in paragraph (60) of the Report.

3. As soon as this procedure is agreed the ASLE&F should agree to call off all forms of industrial action. At the same time the Board should implement paragraph 1(ii) of the 1981 Pay Understanding - the application of the shorter working week agreement, would wait on the outcome of the dispute over flexible rostering.

4. On the publication of our report the Chairman of ACAS should bring the parties together to assist the parties to draw up and agree the terms for its implementation.

Copies of this report will be available from ACAS on request".

Notes to Editors

1. The Committee was comprised as follows: Lord McCarthy (Chairman), Mr G H Doughty and Mr E F Choppen.

2. The Committee's terms of reference were:-

"To consider the terms of the 1981 Pay and Productivity Understandings ratified as Agreements by the Railway Staffs National Council and, taking into account the agreement to introduce a 39 hour week, to make recommendations to resolve the differences over the payment of the further 3 per cent pay increase to footplate grades and over Clause (c) of the Productivity Understanding on flexible rostering and related matters".

3. Copies of the report will be made available to the Press as soon as possible. They will thereafter become generally available on request to ACAS, Cleland House, Page Street, London SW1P 4ND (tel: 01-211 0325).



COMMITTEE OF INQUIRY
REPORT AND RECOMMENDATION
ON A DISPUTE BETWEEN
BRITISH RAILWAYS BOARD
AND THE
ASSOCIATED SOCIETY OF LOCOMOTIVE
ENGINEERS AND FIREMEN

ACAS 2C/120/1982

To:-

Mr J P Lowry, CBE - Chairman, Advisory Conciliation and Arbitration Service.

We were appointed on 2 February 1982 to inquire into the dispute involving footplate staff employed by the British Railways Board and to make recommendations.

In accordance with the terms of our appointment we submit the following report.

Signed/ McCarthy (Chairman)
E F Choppen
G H Doughty

DISPUTE BETWEEN THE BRITISH RAILWAYS BOARD AND THE ASSOCIATED
SOCIETY OF LOCOMOTIVE ENGINEERS AND FIREMEN

COMMITTEE OF INQUIRY

Lord McCarthy MA DPhil, Chairman - Fellow Nuffield College and
the Oxford Management Centre and University Lecturer in Industrial
Relations at Oxford.

E F Choppen CBE, Chairman - Petroleum Industry Training Board
Former Managing Director ESSO Petroleum.

G H Doughty, Former General Secretary - Amalgamated Union
of Engineering Workers, Technical Administrative and Supervisory
Section.

Representing the Parties were:-

British Railways Board

Mr C A Rose

National Union of Railwaymen

Mr S Weighell

Transport Salaried Staffs' Association

Mr T H Jenkins

INTRODUCTION

1. The Advisory Conciliation and Arbitration Service (ACAS) is established to provide conciliation and mediation as a means of avoiding and resolving disputes; to make facilities available for arbitration; to provide advisory services to industry on industrial relations and related matters; and to undertake inquiries as a means of promoting the improvement and extension of collective bargaining.

2. A dispute having arisen between the British Railways Board (BRB) and the Associated Society of Locomotive Engineers and Firemen (ASLE&F) involving the introduction of the shorter working week from 4 January 1982, the payment of 3% increase in wages to staff covered by the Railway Staff Joint Council (Locomotive Section) of the Machinery of Negotiation dated 1956 and negotiation on flexible rostering, ACAS invited representatives of the parties to talks with a view to helping them resolve the issue. Following failure to settle the dispute by conciliation the Chairman of ACAS decided to establish a Committee of Inquiry consisting of a Chairman appointed by ACAS and one representative from each side of industry, in order to inquire into the dispute, and to make recommendations with a view to resolving the differences.

3. On 2 February 1982 we were appointed as the Committee of Inquiry into the dispute with the following terms of reference:

"To consider the terms of the 1981 Pay and Productivity Understandings ratified as Agreements by the Railway Staffs National Council and, taking into account the agreement to introduce a 39 hour week, to make recommendations to resolve the differences over the payment of the further 3 per cent pay increase to Footplate grades and over Clause (c) of the Productivity Understandings on flexible rostering and related matters."

BACKGROUND

4. The 1980 pay agreement for workers in the railway industry contained a clause which provided a reduction in the working

week to 39 hours for conciliation staff and 37 hours for salaried staff from 1 November 1981 providing it was done within the context of discussion of measures to minimise the cost effect.

5. Agreement could not be reached between BRB and the trade unions in relation to a pay increase for 1981. As a consequence the disagreement was referred for determination to the Railway Staff National Tribunal (RSNT). In Decision No 75 the RSNT recommended that 8% should be paid from 20 April 1981 with an additional 3% paid from 1 August 1981 (on 19 April 1981 rates of pay).

6. The BRB reacted to RSNT Decision No 75 by declaring the financial position was such that it could not fund the additional £32m required to implement the increase in full unless there was more progress with productivity initiatives.

7. The railway trade unions felt that by rejecting the tribunal decision the BRB was jeopardising all that had been achieved in the past and was casting doubt on the credibility of the negotiating machinery.

8. Following failure to reach agreement at the Railway Staff National Council the BRB and the three railway trade unions decided to obtain assistance from ACAS. Discussions took place on 18, 19 and 20 August 1981 at the end of which two separate agreements were signed by all parties. One on productivity committed the parties to complete discussions by given target dates on the open station concept, manning of passenger trains, variable rostering hours within limits to be negotiated, easement of conditions for single manning on traction units, manning of freight trains and the trainman concept. The second agreement in relation to pay provided for (1) The payment of an 8% increase in pay from 1 April 1981 (2) Deferment of introduction of the shorter week from 1 November 1981 until the beginning of January 1982 (3) A further 3% increase in pay from the beginning of January 1982 retrospective to 3 August 1981.

9. The agreements reached in the discussions at ACAS were endorsed at a meeting of the Railway Staff National Council on 27 August 1981. On the productivity items it was seen as necessary to reach an agreement on variable day rostering by 31 October 1981 to facilitate the introduction of the shorter working week from 4 January 1982. Six meetings were held of the Railway Staff Joint Council (RSJC) (Locomotive Section) but the target date was overrun without any agreement.

10. On 23 December 1981 the BRB wrote to the ASLE&F and NUR notifying them that for those staff covered by the RSJC (Locomotive Section) they would not introduce the shorter working week from 4 January 1982 nor would they make payment of the additional 3% increase in wages.

11. As a result of the decision by the BRB the ASLE&F took industrial action.

12. The Board proposed a return to ACAS under the terms of the August understanding but conciliation by ACAS failed to resolve the dispute between BRB and ASLE&F. The Chairman of ACAS announced on 2 February 1982 the setting up of this Committee of Inquiry.

MAIN POINTS OF THE REPRESENTATIONS BY THE BRITISH RAILWAYS BOARD

13. The Board first referred to the 1980 Pay Agreement which included a commitment to progress negotiations on changes in national agreements and working practices. The items already tabled for negotiation by the Board included flexible rostering and easement of traction manning arrangements. The reduction of one hour in the standard working week from 1 November 1981, which formed part of the May 1980 Pay Agreement, was clearly understood to be on a minimum cost basis.

14. The Board's adoption of the 8% plus 3% pay increase, recommended by the RSNT in Decision 75, following the understanding

reached with the assistance of ACAS, was that there would be trade union commitment to negotiate on six specific items with target dates named for agreement. The six items included variable Day Rostering and Easement of Conditions of Single Manning, both with a target date of 31 October 1981.

15. The wording of the agreement was that negotiations shall take place to establish variations to the rostering agreements with a view to introducing some flexibility around the 8 hour day, but without producing an unreasonable variation in the length of each working day or week. That could only mean, for footplate staff, the intention of the understanding was to change the existing agreement relating to the 8 hour day minimum payment and to traction manning arrangements in particular.

16. In subsequent Railway Staff Joint Council (Locomotive Section) discussions, by refusing to depart from the 8 hour day, or to make positive progress on easement of manning conditions, ASLE&F had not honoured the understanding reached at ACAS on 19 August 1981, which was the forerunner of the pay understanding of 20 August 1981.

17. Methods of minimum cost implementation of the shorter working week were being applied to all other groups of railway staff. It was reasonable to expect a similar outcome for footplate staff.

18. The existing rostering arrangements for footplate staff were too rigid and were no longer appropriate to the present day requirements of the business.

19. The 8 hour day was the main issue. The Board's view was that it was clearly understood in principle in the August discussions at ACAS that there would be a move away from the guaranteed rigid 8 hour day. The Committee had heard the NUR comment about what they understood. The RSJC negotiations were to decide the new parameters, not the principle.

20. Variable day rosters would enable more effective use to be made of paid time, so increasing efficiency, productivity and offsetting the cost effect of a shorter working week.

21. At the same time variable day rosters would help to reduce the unsociability of footplate work by enabling the introduction of more rest days and longer periods clear of duty and by lessening the incidence of signing on and off between midnight and 5 a.m. The new rosters would also reduce overall working time.

22. The Board's proposal for a 7 to 9 hour variable day was reasonable flexibility around the 8 hour day. The draft agreement was parallel to that agreed for guards who had hitherto had similar rostering arrangements to footplate staff. The proposal did not represent a worsening in conditions. That was not just the Board's view; it was also the view of the NUR; they had made it very clear that they had not made a 'soft deal'.

23. The Committee should not be misled by the ASLE&F reference to BRB being unwilling to consider their alternative proposal. The only ASLE&F suggestion had been that "flexibility" should take the form of turns under 8 hours being paid a minimum of 8 hours and turns over 8 hours being paid overtime. This should be viewed against the ASLE&F statement recorded in RSJC Locomotive Section Minute L762 of 18 March 1980 that "they were not in favour of Footplate Staff rosters exceeding 8 hours daily".

24. The Committee would recognise that the "proposal" was what might be described as "take and take" and really no change from past and present practice. All the ASLE&F pronouncements showed an unwillingness to consider any arrangements which would truly be 'flexibility around the 8 hour day'.

25. The practicability of variable day rostering was demonstrated by its application in major European railway systems.

26. The Committee of Inquiry should devote its attention to

the question of variable day rosters including the associated change in manning, because that was the sole item out of the six listed in the understanding made at ACAS on 19 August on which there had been a recorded failure to agree and no willingness whatever, by ASLE&F, to meet the commitment to negotiate a change away from the current practice. However, the Board attached similar importance to each of the other five items and expected commitments to be met on all of them. Bearing in mind the nature of the understanding on productivity reached at ACAS the terms of the 1981 pay settlement and the course of events leading to the Inquiry, the Committee was asked to endorse the need for rapid progress to agreement on all items. The Board was prepared to pay the 3% increase as soon as the ASLE&F came forward to honour its commitment.

27. The evidence put before the Committee showed there were two separate understandings in August, one on pay and one on productivity. The pay understanding was free standing and was not conditional in the narrow technical sense on productivity being achieved although it had included a very important clause referring to continuance of negotiations. However, there should be no doubt that the pay understanding would not have existed in the form it did if it had not been preceded by the productivity understanding. That was not just the Board's view; it had been confirmed in the NUR and TSSA statements. They had demonstrated that both Trade Unions recognised, and continued to recognise, their commitment to negotiate and reach agreement on the listed productivity items. ASLE&F were parties to the same understanding.

28. It had been suggested that when the August 1981 agreement on flexible rostering was reached ASLE&F had overlooked the possibility that variable rosters prejudiced the retention of the 8 hour guaranteed day principle for trainmen. The fact should not be overlooked that ASLE&F, along with the NUR had already accepted the rescindment with the agreement to introduce the 39 hour week on a minimum cost basis a year previously with the 1980 pay settlement.

29. The understanding on pay and the understanding on productivity, whether free standing or not, enjoyed exactly the same status as agreements. One was no less binding than the other and if the Board were to be expected to renegotiate the productivity commitments through RSNC and RSNT it was also free to re-consider and review the pay elements in similar fashion. If ASLE&F's failure to honour the variable roster commitment was condoned, on the grounds that ASLE&F overlooked a 1919 Agreement, the Board could similarly say with a great deal more certainty that when it accepted the categorical assurances of the Unions that the productivity understanding would be met, it failed to consider that one of the participants would renege on a solemn pledge.

30. There had been a clear indication that at least one of the trade unions represented at the hearing held the view the Board should have used the railway procedure rather than withhold the 3% payment to Footplate staff. First, it was a fact confirmed by all the parties giving evidence that the Board could only agree to pay 11% in the two stages provided the unions committed themselves to greater productivity. That agreement was reached by conciliation through ACAS, ratified at the RSNC by the trade unions and the Board. Second, the flexible rostering item was to negotiate the extent of flexibility around the 8 hour day. Proposals were made by the Board and subsequently by the NUR, within the negotiations at the RSJC (Locomotive Section) meetings that took place on 6 occasions between September and November 1981. Third, when ASLE&F eventually refused to vary the 8 hour guaranteed day agreement they did not propose any other form of flexible rostering that could have met the principles described in the conceptual paper the trade unions were given in 1980 and which was discussed formally at the RSJC (Locomotive Section) meeting of 18 March 1980. When it became known that ASLE&F had broken their part of the bargain the Board tried to return to ACAS under Clause 2 of the agreement reached there in August which offered further ACAS help should any difficulty arise in connection with the pay and productivity understanding reached. ASLE&F refused to use the ACAS machinery. Bearing in mind

the very clear commitment reached at ACAS on flexible rostering the ASLE&F refusal to change from the 8 hour guaranteed day agreement was a clear breach of the productivity understanding. The Board, therefore, was equally entitled to withdraw from its side of the bargain, that was not to honour the pay agreement of which a further 3% was still due to be paid. On record at RSJC (Locomotive Section) was a refusal to honour the ACAS commitment on flexible rostering; repeated at the RSNC meeting on 2 December 1981 when the shorter working week was being discussed. It had been made clear by NUR and BRB that flexible rostering and the shorter working week were linked to the same need to change the 8 hour guaranteed day agreement.

31. The Board tried at RSNC in August to seek an agreement to change the 8 hour day arrangement. It then made efforts at RSJC to negotiate the parameters of flexibility and later again at RSNC failed to get ASLE&F to negotiate from the 8 hour day. The Board then had another refusal from ASLE&F to use the ACAS facility for dealing with difficulties expressly provided for in the original agreement. Later in January 1982 again with the help of ACAS the Board was willing to submit the dispute to the RSNT under Clause 65(a) for a binding decision which was also refused by ASLE&F. It was clear that ASLE&F would have attended further talks if the 3% had been paid in advance; there had been talks but no results. Against the record of meetings and decisions the failure by ASLE&F to honour its commitment was outstanding.

32. The outcome of the hearing was crucial to the future of the industry. In essence the question before the Committee was whether BR should be tied indefinitely to agreements which limited its efficiency and which could not be changed without overall benefit to the workforce. The railway industry had to change to compete: it had to compete to survive.

33. BRB asked the Committee to award as follows:-

- (1) that ASLE&F had failed to meet their commitment to negotiate a departure from fixed 8 hour day rostering;
- (2) that the proposals made by the Board for variable day rostering of footplate staff were reasonable;
- (3) that the draft agreement on variable rostering should be adopted and implemented, together with the draft agreement adjusting traction manning arrangements;
- (4) that the parties should expedite negotiations on the remaining items to which they were committed in the understanding on productivity reached at ACAS, in order to reach agreements within the machinery on a minimum timescale.

34. BRB emphasised the critical importance of productivity and efficiency to the whole future of the railway. Although the dispute centred specifically around the question of flexible rostering, the matter was much wider. Flexible rostering was one of the key elements in the Board's determination to secure a better future for the railways and for the people who worked in the industry. The Board and the Trade Unions were rightly pressing the Government for a higher level of investment, of which the electrification programme formed an important part, and for a stronger financial framework within which the business could be operated.

35. In putting forward that demand BRB had a responsibility to demonstrate that they were making the maximum contribution; that they were using effectively the equipment and manpower they had and that they were prepared to change their methods and working practices where this could lead to more efficiency.

36. Equal importance was attached to the objective of improving the pay and conditions of the workforce and it had consistently acknowledged the need to ensure that all staff were properly paid and that BRB was competitive in the labour market. BRB had consistently argued they could help themselves to generate the possibility for improvements from their own efforts.

37. All this had been stated in the Corporate Plan (1981-85) and in the statement on Rail Policy issued in March 1981. There was nothing new in the Board's determination to move forward on productivity and this was underlined in the negotiations on pay in 1981 and also in the deliberations and understandings reached with the help of ACAS in August 1981. The BRB agreement on pay was only possible because the trade unions - all of them - freely committed themselves to meaningful progress on productivity.

38. The resolution of the dispute was vital to the future of British Railways. If it was resolved positively it could help towards the better future - a future where it could be said with confidence that all were prepared to make their own contribution and ask the nation to make its contribution towards that better system which the country needed and deserved. But if it was resolved negatively, if BRB and the railway trade unions declined to make even this first, modest step forward, the future was bleak.

39. BRB hoped that the Committee would help to point the industry towards the brighter future.

MAIN POINTS OF THE SUBMISSION BY THE NATIONAL UNION OF RAILWAYMEN

40. As early as 2 April 1981 the unions wrote jointly to BRB making it clear that discussions on productivity should be pursued separately from the 1981 pay claim. Progress had already been made on the question of changes in work practices quite independently of the annual pay award. When, following the BRB's attempt to attach productivity conditions to the 3%, the NUR had been prepared to take industrial action in order to secure the

full implementation of RSNT Decision No 75. The NUR Secretary had played a central role in the subsequent discussions at ACAS which eventually led to a basis for settlement.

41. There could be no doubt whatsoever that the agreement reached at ACAS signed on behalf of the NUR committed the BRB to fully implement RSNT Decision No 75 which involved payment of the 3%. It was on this basis that the NUR demanded that NUR Footplate staff should be paid the 3% increase because it was seen the payment was separate and distinct from productivity. The Board's acceptance of this argument underlined their recognition that they had abrogated the understanding on pay for footplate staff reached at ACAS.

42. However, NUR would have been misleading the Committee if it did not also say that in accepting the understandings reached at ACAS the NUR knew that it was going to have to negotiate on all the six areas identified in the Understanding of Productivity. Without the commitment to implement RSNT Decision No 75 NUR would not have agreed but no one could doubt that without the Productivity understanding the Board would not have signed. Certainly, two separate agreements emerged but there could be no doubt that each was dependent on the other.

43. The NUR had shown how it interpreted the understandings reached at ACAS by fulfilling the obligations it had undertaken and it was for the members of the Inquiry to judge the merits of the arguments put forward by the parties in dispute.

44. Between April 1980 and September 1981 12,000 posts had been lost in the industry. The unions had co-operated with the BRB on productivity items; a conservative estimate of the savings achieved in labour costs as a result of changes was £55 million per year. Accepting the Understanding on Productivity was a further indication the unions were effectively fulfilling their commitment to continue the progress they had already made in that area.

45. An ad hoc meeting between the three railway unions and the Board took place on 11 January 1982. The NUR representatives at the meeting had argued that the Board were obliged to pay the 3%. The Board had at first argued they could only pay footplate staff, whether ASLE&F or NUR members, after agreement on variable rostering had been reached at RSJC (Locomotive Section). After adjournment they offered the 3% to NUR footplate members on the understanding that they regarded as acceptable the NUR's response to the productivity commitments. The NUR Executive Committee had re-affirmed their view was that the 3% was separate and distinct from productivity. Real improvements in pay were expected to result from any productivity changes agreed.

46. Flexibility in rostering was an item that had been under discussion since early in 1980. The Board had proposed to discontinue all existing roster agreements. The NUR had objected to what it saw in the Board's proposals as excessive variations in the length of shifts and the diminished responsibility of Local Departmental Committees (LDC's). It became NUR policy that the 39 hour week should be implemented on the basis of an additional rest day each eight weeks. The Board indicated that the policy was incompatible with the minimum cost clause in the agreement, and, therefore, was unacceptable. The Board's original proposal was that all groups of staff should have each turn reduced by 12 minutes. Between the two extremes was the basis for a settlement; the new agreement was for the rostering of turns between 7 and 9 hours.

47. The NUR saw the agreement achieved for guards and other conciliation staff on variable rostering as a good agreement. Instead of making the working life of railwaymen more unsociable it made it more sociable. The agreement increased the number of rest days, allowed for the grouping of rest days, reduced the number of turns booked on or off at unsocial hours, gave an inviolate right to free days, introduced a 39 hour guaranteed pay week and gave local control over rosters.

48. Although the 8 hour guaranteed day no longer existed it had been replaced by an equally watertight agreement which introduced the 39 hour week. In addition, the NUR expected real improvements in the conditions of service for its members financed out of funds generated from flexible rostering.

49. It had been made clear that the NUR was seeking for its footplate members a similar agreement to that made for guards. NUR had defended the 8 hour guaranteed day so long as there were no options that would improve the rostering arrangements of members while retaining payment agreement. The new agreement continued to guarantee payment and improved the rostering arrangements.

50. ASLE&F on the other hand had taken the view that the 8 hour guaranteed day was sacrosanct. On 18 November 1981 at RSJC (Loco) ASLE&F had admitted they might abandon the 8 hour guaranteed day principle if they could achieve tangible benefits from a new rostering system. Although several meetings had been held no agreement had been reached for variable rostering for footplate staff.

51. The NUR represented the bulk of the staff employed by the British Railways Board including some 1600 Footplate staff. It was, therefore, vitally concerned in seeking a solution to the current dispute. While the two parties faced each other in a slanging match the industry was bleeding to death. Freight was being lost, passengers were finding alternative ways of getting to work and when the dispute was over, as eventually it must be, BRB would be left to pick up the wreckage of the industry. Thousands of jobs belonging to NUR members were threatened not only on the Railways but also in the Workshops. Confidence in the industry had been seriously damaged and the real prospects of persuading Government to increase investment and push ahead with electrification would have been sacrificed because neither party had been prepared to compromise.

52. The NUR throughout had acted responsibly and in the best interests of its members. It had used the opportunity of the productivity discussions to improve conditions for its members and when the savings were tallied up NUR would be using them to bring further improvement to pay and conditions.

MAIN POINTS OF THE REPRESENTATIONS BY THE TRANSPORT SALARIED STAFFS' ASSOCIATION

53. The TSSA urged the Committee - even in the absence of the ASLE&F - to make a firm recommendation to enable the difficult situation to be resolved.

54. TSSA had a considerable number of members involved in the 1956 Machinery of Negotiation and Consultation. It also had a large number of members in other machineries. There were Senior Officers, Management Staff, Professional and Technical Staff and Workshop Supervisors. In addition there were staff employed in BT Hotels, BREL and other subsidiaries who are desperately under pressure. The dispute was affecting them all because there was a prospect of parts being sold to enable BR to cover their acute financial situation.

55. There were faults on the part of both BRB and ASLE&F. All sides could be castigated but all had to live as one railway family, not only today, but in the difficult times that lay ahead.

56. The BRB had acted injudiciously. But it would help if the whole issue was put back into the 1956 Machinery of Negotiation - TSSA believed that was the only way the problem would be resolved.

57. Clauses 16 and 17 of the Memorandum of Agreement signed in 1956 stated that first in no circumstances shall a matter in dispute between the British Transport Commission and a Railway Trade Union or Unions, which is within the scope of this Machinery of Negotiation, be referred to any person or body outside this Machinery until the matter had been considered at all stages

of this Machinery for which it is eligible. Second in no circumstances shall there be any withdrawal of labour or any attempt on the part of the staff to hamper the proper working of the Railway until any matter in dispute had been submitted through the proper channels to the higher Management, or, if such matter was within the scope of the Machinery of Negotiation, until the provisions thereof had been fully utilised.

58. There were breaches of procedure on both sides.

59. On the one hand, BRB had not acted properly bearing in mind that at no point in the agreement reached at ACAS or at subsequent RSNC meetings was it ever determined that the payment of 3% would be withheld if certain matters were not resolved. On the other hand, ASLE&F were in the wrong in that they had not been able to deliver in line with their commitment to productivity set out in the understanding on that matter reached in August 1981 after two long and exhausting days, before the drafting of the understanding on pay. Whilst the two understandings were separate and distinct, they hung together.

60. The question had arisen as to whether any of the parties could decide not to go to the RSNT if the BRB had utilised RSNC and RSNT. In this connection there was a precedent, as in the reference leading to RSNT Decision No 42 in 1974, for BRB taking the Trade Unions to the RSNT.

61. In June 1981 the BRB did not go willingly to the RSNT. It was the Trade Unions which made the reference and in the traditions of the industry the BRB attended and gave evidence. It was only fair to point out the BRB did not refuse to attend.

62. Both the BRB and the NUR had got the shorter working week and flexible rostering mixed up. In the TSSA view they were entirely separate matters. In fact, the shorter working week was part of the 1980 pay settlement and it was a matter of record that the method of introduction for clerical staff was

agreed in April 1981. That was well before the question of variable rostering became a major item in the productivity issues of the 1981 pay settlement.

63. In fact the mixed up thinking was clearly demonstrated in the RSJC (Loco) Minute of the meeting held on 30 November 1981 at which it was said that disagreement was reached. The minute was headed, and related to "Variable Rostering Hours within limits to be negotiated".

64. The meeting of the RSNC held on 2 December 1981 (2 days later) was in the words of the Chairman "called specially to discuss the position relative to the introduction of the Shorter Working Week, that was 39 hours for Conciliation grades and 37 hours for Salaried Staff". In the TSSA view a second item at that meeting should have been the question of flexible rostering bearing in mind "the failure to agree" reached at RSJC (Loco) on 30 November 1981. Here was a major failure to progress the matter inside the Machinery.

65. TSSA whose objective was to finalise the ruinous dispute at the earliest moment asked the Committee to determine:-

- (a) that there were no conditions attached to the payment of the 3% to all staff in the RSNC Minute No 846 which ratified the understanding on pay reached at ACAS and accordingly it should be paid to all staff covered by the 1956 Machinery of Negotiation.
- (b) that all parties should go through the proper procedure to resolve the dispute and in that connection the morality of commitment on productivity lay in favour of the BRB in that ASLE&F had so far failed to honour that commitment. Clearly, all parties needed to get back into discussion at RSNC and if progress could not be made the matter should be referred to the RSNT in the usual way. The processes should take a matter of hours rather than days.

66. The covering document to the "two understandings" arrived at at ACAS clearly said that the "RSNC" could go back to ACAS. That had never been activated because the RSNC was four parties and not one party. The BRB sought to go back to ACAS on their own. Although TSSA understood that the BRB and ASLE&F did go to ACAS on 30 December 1981 they could not make progress. TSSA firmly believed that if the matter had been to RSNC and all the parties had been available at ACAS there was a chance between them they could have helped to avoid the present situation.

67. The position of the whole industry was serious in the extreme. The industry needed recommendations from the Committee that would point all the parties along a road which would enable discussion to be resumed inside the Machinery. No progress would be made and stalemate would continue unless and until all the parties were got back into discussion inside the Machinery.

68. TSSA asked the Committee to recommend accordingly - and without any dubiety as to the direction, to the four parties concerned.

CONCLUSIONS AND RECOMMENDATIONS

A. Constraints and Problems

69. When we agreed to undertake this inquiry we were well aware of a number of constraints and problems which we would need to overcome. In the first place we were working against the background of continuing industrial action and the loss of railway services and revenue. At the very least this has imposed on us the need to find a quick and effective basis for a return to normal working. It has been our experience that tight time constraints are not the best aids to arriving at lasting solutions to complex industrial problems. Secondly, and just as important, we were already involved in the operation of the railway's established machinery for settling issues in dispute between all the parties. Our chairman is also the chairman of the Railway Staff National Tribunal. We have all been members of past Tribunals which have made awards which were likely to be quoted in this inquiry. Presumably it was partly for this reason that we were asked by the Chairman of ACAS to undertake the inquiry - it must have been assumed that we knew something about the issues in dispute. But our past involvement has made us very much aware of the need to safeguard the continued acceptability of the established machinery. We have, therefore, had to be careful to do nothing to undermine its future credibility in the eyes of all its signatories.

70. Yet as things worked out our third constraint proved to be the most severe. When we agreed to serve we were given reason to believe that all the parties to the machinery would appear before us. This did not turn out to be the case, and although we tried to secure the basis for the participation of the ASLE&F, it has not proved possible to arrive at a mutually acceptable way of securing this objective. Nevertheless, and after careful consideration, we were convinced that it was in the interests of all that we should not abandon our allotted task.

B. The Origins of the Present Dispute

71. Given these constraints, we feel able to pronounce upon the origins of the dispute. It arose out of the actions of the Board after the publication of RSNT decision 75. This decision was made under Paragraph 65(b) of the Machinery and was not binding on any of the parties. The Board were, therefore, free to take the view that the recommended pay increase of a further 3% from the 1st of August, 1981 was not acceptable to them unless there was more progress on 'productivity initiatives'. But the unions accepted RSNT 75 as it stood, and did not find the Board's view acceptable. Both the NUR and the ASLE&F gave notice of strike action to induce the Board to honour the terms of Decision 75 in full.

72. As a result the parties decided to obtain the assistance of ACAS and after discussion two 'Understandings' were agreed. The first dealt with six areas where the Board wished to see further progress to improve productivity. This dispute most directly concerns:-

(1) what was involved in sub-paragraph 2(c) which reads:

"c Variable Rostering hours within limits to be negotiated Negotiations shall take place to establish variations to the rostering agreements with a view to introducing some flexibility around the 8 hour day, but without producing unreasonable variation in the length of each working day of week. These discussions shall be concluded by 31 October 1981".

(2) It also concerns the 'Understanding on Pay', the relevant parts of which read as follows:

"1 (ii) A further increase of 3% on the rates prevailing on 19th of April 1981 shall be paid to the same grades from 3 August, 1981, the actual payment being made in

the first pay period in January 1982.

2 The introduction of the shorter working week provided for in Paragraph 9 of the 1980 Pay Agreement shall be deferred until 4 January 1982.

3 The constituent parties of the RSNC accept the comments set out in Paragraph 190 of the RSNC Decision 75 regarding the continuation of negotiations on productivity issues and commit themselves to continue the progress that has already been made in the areas covered by Clauses 1(i), (ii) and (iii) of the 1980 Pay Agreement".

(3) The relevant terms of the 1980 Pay Agreement dealing with the shorter working week are as follows:

"(9) The Board accepts a commitment to reduce the standard working week of staff covered by the RSNC from the present levels of 40 hours for Conciliation Staff and 38 hours for Salaried Staff by the equivalent of one hour from 1 November, 1981, providing this is done within the context of discussion of measures which will minimise the cost effect".

(4) Paragraph 190 of Decision 75 reads:

"We fully appreciate that given the financial and market constraints that press on the industry adequate pay and conditions must continue to be dependent on what can be done to maintain and improve productivity. It has been made clear to us that the current proposals for productivity improvements were not before us as a Tribunal and we were not asked to take them into account. Nevertheless, we were told by the Board that their present offer is dependent on the understanding that negotiations on productivity will continue. Moreover, all parties have pointed out that already substantial progress has been made as a result

of negotiations last year. We welcome this development, and hope that if our decision gains acceptance further and more substantial progress will be achieved".

(5) In addition to these two understandings the parties also agreed a preamble which reads as follows:

"1. As a result of discussions held under the auspices of ACAS on 18/19/20 August 1981, the RSNC has reached an understanding on pay. Stemming from Paragraph 190 of RSNT Decision No 75 a separate understanding has been reached on productivity. Copies of these understandings are attached.

2. In the event of there being any problem regarding the application of either of the two understandings the RSNC may request the further assistance of ACAS.

3. The three unions (ASLE&F, NUR and TSSA) will take immediate steps to recommend these understandings for ratification by their respective executives, following which the ASLE&F and NUR will countermand their decisions to call out their members as from 31 August 1981".

73. As we understand it the origins of the present dispute lie in the fact that there is no universally acceptable view of the obligations incumbent on one or another of the parties as a result of these agreements. We have to state, therefore, what we understand to be the position of each of them, to the best of our ability.

C. The Views of the Parties

74. The Board's view is that all along they made clear their intention to regard their obligations under sub-paragraph 1 (ii) of the pay understanding as 'conditional' on satisfactory

'progress' in respect of the understanding on productivity.

75. They assert that although there was somewhat slow progress in the implementation of some other parts of the understanding, there is only one part where they are complaining about the rate of progress at the present time; that is, sub-paragraph 2(c) on 'Variable Rostering hours within limits to be negotiated'. And even here their complaint is one directed at the attitude of the ASLE&F.

76. The Board charges the Society with failing to negotiate - by which they mean that the ASLE&F has not been prepared to consider forms of flexible roosting which involve moves away from the existing agreement on the eight hour guaranteed day. The Board's view is that the existing agreement is incompatible with the understanding on variable roosting and cannot be reconciled with the terms of Paragraph 9 of the 1980 Pay Agreement, which they accept they have agreed to implement from the 4th of January under the terms of paragraph 2 of the understanding on pay. As can be seen above paragraph 9 limits the Board's acceptance of a shorter working week to a form in which 'this can be done within the context of discussion of measures which will minimise the cost effect'.

77. In effect the Board is saying that its declared intention to make the payment of the additional 3% conditional on satisfactory progress on productivity justified it in refusing to grant ASLE&F members either more pay or shorter working hours, until a satisfactory agreement can be reached to implement the terms of sub-paragraph 2(c) for their members.

78. However, the unions appearing before us do not accept that the Board was justified in acting as it did. They stressed that the preamble to the understandings state that the productivity understanding was to be regarded as a 'separate understanding' to that on wages. It was true that reference was made, in paragraph 3 of the pay understanding, to the terms of Paragraph

190 of RSNT Decision 75. But, say the unions, as set out above this does not justify linking the 3% payment to further progress on productivity - indeed, this was precisely why the Board felt that they could not accept Decision 75 as it stood. It was to remove the threat of 'conditionality' that both the NUR and the ASLE&F threatened strike action. Evidence of their success lies in the specific terms of both agreements, which nowhere require payment to be conditional on satisfactory progress under any specified heading.

79. On the other hand both the NUR and the TSSA accepted that under the terms of the productivity understanding itself they were obligated to do their utmost to make progress towards the objectives set out therein. In the case of sub-paragraph 2(c) they were committed to negotiate 'to establish variations' to existing rostering agreements. This had involved modifications in the way in which existing guaranteed payments were operated, and forms of flexibility around the 8 hour day that made possible a reduction of the length of the working week which helped to reduce its cost.

80. Both unions had taken immediate steps, in the terms set out in the preamble, to 'recommend these understandings for ratification by their respective executives'. In their opinion the agreements that resulted were of advantage to their members and they did not wish to see them undermined or upset in any way.

81. The two unions before us also disagreed with the Board, in that they took the view that more use could have been made of the established machinery. Thus NUR took the view that there had been a clear failure to agree at RSJC (Loco) on the 30th of November 'on variable rostering and an equally clear failure to agree on the implementation of the 39 hour week in conjunction with variable rosters at the RSNC on 2nd December 1981'. They concluded: 'it was obviously open to the parties to proceed to the next stage'.

82. The TSSA, for their part, also took the view that there has been a failure to agree reached at RSJC (Loco) 'on the 30th of November 1981'. Their spokesman argued that at the subsequent meeting of the RSNC on the 2nd December one item 'at this meeting should have been the question of flexible rostering'. He concluded 'here was a major failure to progress the matter inside the machinery'.

83. On the other hand all parties who appeared before us state that after the Board determined to hold up the payment of the 3% the ASLE&F refused to allow an RSNC to take place until the payment had been made. As a result there was an informal meeting 'outside the Machinery' on Monday the 11th of January. But this failed to resolve the issues in dispute.

84. In short, the NUR and the TSSA take the view that although the Board only agreed to the pay understanding because it was able to secure the productivity understanding, the fact that no agreement had been reached with the ASLE&F on the implementation of flexible rostering did not justify the Board acting as they did. Payment should have been made and the issue of ASLE&F's attitude towards flexible rostering progressed through the established machinery.

85. Which brings us to the position of the ASLE&F itself. We have had to rely on the record of meetings of the RSNC and the RSJC (Loco) to gain our impression of their view. In particular we have used the minutes of RSNC meetings since the 27th of August and 'Notes of Joint Discussion' held at RSJC (Loco) since the 2nd of September. We fully appreciate that even where minutes are finalised and agreed they do not necessarily convey the precise nuances of discussions, especially those which have to summarise long and complex arguments. Nevertheless, if we are to make progress with our inquiries, and come up with helpful proposals, we must use the evidence which has been presented to us.

86. The first point to make is that nothing has been placed before us to suggest that the Society has formally reneged on the understandings reached with the assistance of ACAS, which were endorsed by ASLE&F at the subsequent RSNC. What they have done is to suggest that their implementation, in the forms so far advanced by the Board, give rise to numerous difficulties and problems. These would involve changes in existing agreements and understandings that would not be acceptable to their members.

87. The most frequently raised problem seems to concern the implications for the existing agreement providing for a guaranteed payment of eight hours pay - even where rostered hours are for less than this period. The Society has taken the view that the abrogation of the guaranteed payment agreement in its present form would represent a worsening of conditions.

88. Also objectionable to the ASLE&F have been the Board's proposals for lengthening roster time on a more systematic and regular basis than at present - that is, up to periods of nine hours. The Society has taken the view that the grades they represent have special problems of stress and strain and further argue that any significant increase in total hours could have an effect on safety and the domestic and social life of their members.

89. They have also argued that the specific examples of more flexible rostering placed before them suffer from practical defects; for example, they will require more administrative staff, create problems of 'spare coverage' and be difficult to operate in periods affected by annual holidays. They are also said to be difficult to square with established practices relating to the 'equalisations of earnings,' and the protection of 'sensible rest periods'. Other problems raised include the 'method of utilising spare men' and the provision of special trains. On balance, say the ASLE&F, the Board's proposals would produce 'a considerable amount of chaos and might even result in the cancellation of services'.

90. In any case, the Society argues that the Board already has at its disposal, considerable flexibility to vary the length and timing of rostered hours - for example, these can be moved '2 hours either way from day to day' under existing agreements.

91. Finally, the Society says that the introduction of the shorter working week, under the terms of the 1980 Pay Agreement, is 'separate and apart' from the question of flexible rostering. Asked about the references to the need to pay regard to 'measures which will minimise the cost effect' of shorter hours they appear to have replied that in their view this means 'minimising costs within existing agreements'.

92. Yet once again, at least on our reading of these documents, the Society has not wished to present its position as unremittingly negative and obstructive. Thus it has been prepared to discuss the limits of 'a mutually acceptable definition of flexibility around the eight hour day' - that is, in the terms set out in sub-paragraph 2(c). Our documents also suggest that it has asked that management consider 'a more acceptable variance to that proposed'. It has also said that it 'did not wish to prejudice any discussions which were taking place regarding other groups of grades'. Finally, on the 18th of November the notes of a joint discussion at the RSJC (Loco) suggest that the Society took the view that a modification of the eight hour day agreement would only be considered if 'the benefits derived from the new system adequately compensated their members'.

D. Our own Views

93. It seems to us that before we can make our recommendations for dealing with this dispute we need to state our own views on four related issues:

- (1) The relationship between the understandings on pay and productivity;

(2) The nature of the disagreement between ASLE&F and the Board at the time when the Board decided not to pay the 3%;

(3) The Board's decision and its consequences;

(4) The resources for settlement provided by the established machinery.

94. We accept that the board made it clear to the parties that it would not be possible to justify payment of the additional 3% unless there was satisfactory progress on the implementation of the productivity understanding. In this sense it may be said to have made a statement of intent about its own future attitude.

95. But we also believe that the other parties made it clear that they did not share this view of the Board's rights and obligations. They took their stand on the actual words in the two understandings and the preamble which preceded them. On this matter (it is clear to us that there is nothing in these agreements which makes the payment of the 3% conditional on the Board's view that satisfactory progress had been achieved under a particular heading. In effect the Board was not provided with a veto which they alone need interpret.

96. On the other hand, the two agreements are obviously related, in that they would not have been signed without each other. The productivity understanding was what the Board required before it would implement Decision 75. The unions agreed, because they wanted to secure the additional increase; although the NUR and the TSSA stress that in their view the subsequent implementation of the productivity understandings represent worthwhile agreements in themselves. These provide for additional time off, a reduction in unsocial booking on and off times, improved procedures for joint control and so on.

Indeed, the NUR stressed to us that hard bargaining, and a readiness to compromise in the interests of a more efficient railway system, should bring further rewards - for example, a result of paragraph 3 of the understanding which provides that:

'specific rewards will be negotiated for those staff whose responsibilities are directly affected under these agreements'.

97. Our own view is that what has been agreed so far as a result of these separate but related understandings reflects credit on those involved; nothing in this report is intended to undermine or detract from what has been achieved.

98. Which brings us to the nature of the disagreement between the Board and the ASLE&F. We think this mainly concerns whether or not sub-paragraph 2(c) involves and implies changes in other agreements and the practices which have been developed to implement those agreements. But it also involves the meaning and application of some of those agreements themselves - most notably the agreement on the implementation of the shorter working week.

99. Also in dispute between the parties are the practicality of the Board's proposals for footplate men and their likely impact on their working lives.

100. The stated view of the Board is that sub-paragraph 2(c) involves and implies far reaching changes in existing agreements and practices. They also take the view that its implementation is inextricably bound up with their proposals to move towards the shorter working week. What has been suggested has already been agreed with other grades - most notably in respect of guards. The Board considers this practical and reasonable and agrees that it should be accepted in principle by the ASLE&F.

101. The ASLE&F view, as we understand it, does not seek to renege on the understandings of August 1981 which they endorsed at the subsequent RSNC. What it does is challenge the Board's

interpretation of them as they apply to footplate grades. In particular, their view seems to be that the implications of subparagraph 2(c) can be reconciled with existing agreements, including the introduction of the shorter working week as specified in the 1980 agreement and paragraph 2 of the understanding on pay.

102. We fully understand the Board's viewpoint, and why it takes the view it does; what we feel is that within the context of its own commitment to improve productivity and contain costs the ASLE&F must be given an opportunity to make their case for an alternative solution in a forum where the Board can rely on receiving a speedy and independent judgement on the differences between them.

103. But, given the present circumstances, it seems unreasonable and counter-productive to expect us to provide a definitive answer to the complex questions in the absence of the ASLE&F and in the middle of an industrial dispute which is causing great harm to the railway and inconvenience to the public. We also doubt how far an answer of this kind, outside the confines of the established procedure, would be most likely to gain the general acceptance of all the parties involved. We fully accept the need to make rapid progress to agreement on all remaining items in the productivity understanding, and to provide a framework of up to date agreements that are compatible with the operating requirement of a modern efficient railway. But we feel that the best way out of the present problem is to find a means of utilising the established machinery, bearing in mind the need to avoid unnecessary delay and safeguard the interests and agreements of all the parties. In the final section of our report at paragraph 110(b) we advance concrete proposals to this end.

104. We turn now to our attitude towards the Board's decision not to pay the 3% and its consequences. We feel that the best case that can be made for the Board is that it had come to the conclusion that it was justified in acting as it did because ASLE&F was itself in breach of the productivity understanding.

The weakness of their position is, that as the Board's spokesman admitted, the pay understanding "was not conditional in the narrow technical sense on productivity being achieved, although it did include a very important clause referring to the continuance of negotiations".

105. As we have said one problem we have is that the absence of the ASLE&F from our hearings prevents us from deciding how far the Society were prepared to negotiate - on their own terms, if not those of the Board. But in any case the justifiability of the Board's action turns on another even more important factor - the alternatives open to them at the time. To decide this issue we must first consider our fourth question; the resources for settlement provided by the existing machinery.

106. We find that we cannot agree that there were no unused resources within the established machinery when the Board decided to withhold payment of the 3%. As the other unions state, there could have been a formal failure to agree on the 30th November at the level of the RSJC (Loco) which was used to open the way to a further 'declinature' at the subsequent RSNC. This could have led to a reference to the RSNT under the terms of Paragraph 65(b) of the Machinery. Any award made would not have been binding, but in our experience the record of the parties indicates that an RSNT report would have been considered seriously, and might well have offered the best way out of the current impasse.

107. Of course we understand why the Board decided instead to invoke the aid of ACAS, but when the ASLE&F refused to agree the established procedure could have been tried. On the other hand, it has been put to us that the ASLE&F is itself a party to the procedure, and that opportunities for further progression within the Machinery were open to them also. Unfortunately we have not been able to put this point to them to obtain their response.

108. As it was the Board decided to withhold the 3% and the ASLE&F seems to have taken the view that until this decision

was reversed they were not prepared to attend a meeting of the RSNC. As a result the present dispute has escalated into a prolonged and damaging industrial conflict which we cannot believe that any of the parties either envisaged or desired. Our own view is that this was and is a disaster for the railway industry, but in the circumstances we do not feel it would help if we were to seek to apportion further blame. We would rather turn to our proposals for securing a settlement.

E. Proposals for a Settlement

109. The crux of our proposals lie in a re-assertion of ASLE&F's commitment to the understanding of August 1981 and a return to the established Machinery in a form that will ensure a rapid decisive settlement of the issues in dispute. If a procedure to bring this about can be agreed between the parties, the ASLE&F should call off its industrial action and the Board should agree to implement sub-paragraph 1(ii) of the pay understanding in respect of ASLE&F members - although the way in which the shorter working week is to be implemented in this case will have to wait on the outcome of the dispute on flexible rostering, since it is the subject of contention between the parties.

110. To this end we recommend:-

a) The ASLE&F should confirm its continued commitment to the understandings of August 1981 as endorsed by the RSNC - in specific terms sub-paragraph 2(c) of the productivity understanding and paragraph 2 of the understanding on pay. Viz.

11 "c Variable Rostering hours within limits to be negotiated. Negotiations shall take place to establish variations to the rostering agreements with a view to introducing some flexibility around the 8 hour day, but without producing unreasonable variation in the length of each working day of week. These discussions shall be concluded by 31 October 1981".

"2 The introduction of the shorter working week provided for in Paragraph 9 of the 1980 Pay Agreement shall be deferred until 4 January 1982."

b) The parties should agree a procedure for dealing with the way in which sub-paragraph 2(c) of the productivity understanding is to be applied to locomotive grades. This should

take the form set out below:-

- (i) First, there should be a meeting of the RSJC (Loco) within seven days of the acceptance of our recommendations. At that meeting the Board should present its proposals for implementing sub-paragraph 2(c) of the Productivity Understanding to footplate grades. Unless agreement can be reached on a means of implementing sub paragraph 2(c) within seven days, or unless the RSJC (Loco) agrees to extend this period, a failure to agree should be recorded and arrangements made for a meeting of the RSNC within a further two days.

- (ii) Second, unless at the meeting of the RSNC, there is agreement on a means of implementing sub-paragraph 2(c), or the RSNC agrees to extend this period, a failure to agree should be recorded and arrangements made for reference to the RSNT. It should be agreed that such a reference should take precedence over all outstanding references to the RSNT. The parties should also agree to accept one of the dates offered by the members of the RSNT for an early hearing.

- c) Unless there is agreement to extend the period of consideration by either the RSJC (Loco) or the RSNC, the parties should agree to a hearing before the RSNT on one of the following dates:- 15, 16 or 19 March 1982.

- d) As the parties are aware there are two alternative procedures for securing access to the RSNT. One of these involves Paragraph 65(a) of the machinery and requires the parties to accept a binding award. We understand why the Board, at one stage in this dispute, felt it could only consent to invoke the aid of the RSNT by the use of this procedure. They would be free to argue for its use in this instance. However, we cannot agree that this is the only way in which the established machinery can help. Therefore, if it is not possible to secure agreement to binding arbitration, use should be made of the normal avenue of advance to

the RSNT - that is, by the use of Paragraph 65(b). This would enable the Board to refer the issues in dispute to the RSNT in a form prescribed below. We have to say that in our experience all the parties have in the past shown respect for the Decisions of the RSNT, using Paragraph 65(b) of the Machinery. It is true that on one or two occasions what it has proposed has had to be modified, or even set aside, to provide the basis for an acceptable solution. But it cannot be over-stressed that in the great majority of instances it has proved possible to work towards a mutually acceptable solution by involving its aid.

- e) To help in this case we consider that it would be advisable for us to recommend to the parties a form in which the issues in dispute should be placed before the RSNT. Our recommendation is as follows:-

"To ask the Railway Staff National Tribunal, established under Appendix, Part VI, to the Agreement in regard to the Machinery of Negotiation for Railway Staff, dated 28th May 1956, to consider (under the appropriate paragraph)... the proposals of the British Railways' Board for the implementation of sub-paragraph 2(c) of the 1981 Productivity Understanding to footplate staff and to award".

- f) We have set out above a procedure for dealing with the way in which sub-paragraph 2(c) of the productivity understanding is to be applied to footplate staff. Given the agreement of the parties in dispute to this procedure, we recommend that two things should happen: The ASLE&F should agree to call off all forms of industrial action and return to normal working. At the same time the Board should agree to implement paragraph 1(ii) of the pay understanding.
- g) On the publication of our report the Chairman of ACAS should express his readiness to bring the parties together as soon as may be to assist in its implementation.

F. The Consequences of Rejection

111. We have done our best to discharge the complex and difficult task set us by the Chairman of ACAS. We have explained the constraints and problems which have been uppermost in our minds, we have stressed the need to preserve the industry's established machinery and the agreements that have already been reached to implement the August Understandings. We believe that what we have proposed offers the best prospect of tracing a way out of the present differences between the parties in dispute. The consequences of rejecting what we propose appears to us to be extremely grave and potentially disastrous.

112. The chance of agreement may offer a final prospect of moving towards the 'brighter future' which the Board has reminded us we all wish to promote. In this spirit we recommend our proposals to all the parties involved.

G. Summary

113. Our recommendations may be summarised thus:-

- (1) The ASLE&F should confirm its continued commitment to the understandings of August 1981 as enclosed by the RSNC - in specific terms sub-paragraph 2(c) of the productivity understanding and paragraph 2 of the understanding on pay.
- (2) The parties should agree to procedure for dealing with the way in which sub-paragraph 2(c) of the productivity understanding is to be applied to locomotive grades. This should take the following form:-
 - (i) There should be a meeting of the RSJC (Loco) within seven days to consider the Board's proposals to implement sub-paragraph 2(c). Unless agreement is reached within seven days, or the RSJC (Loco) agrees to extend the period, a failure to agree

should be recorded at a meeting of the RSNC held within a further two days.

- (ii) Unless, at the meeting of the RSNC agreement is reached, or the RSNC agrees to extend the period, reference should be made to the RSNT. This reference should take preference over all other outstanding references under conditions set out in paragraph 38(d) above.
 - (iii) Unless there is agreement to extend the period of consideration by either RSJC (Loco) or the RSNC, the parties should agree to a hearing before the RSNT on one of the following dates: - 15, 16 or 19 March 1982.
 - (iv) Reference to the RSNT should be by the use of either Paragraph 65(a) or 65(b) of the Machinery. If it is not possible to secure agreement for the use of binding arbitration, the parties should agree to abide by the more customary procedure under Paragraph 65(b).
 - (v) The terms of reference for the RSNT should be as set out in paragraph (b) above.
- (3) As soon as the procedure is agreed the ASLE&F should agree to call off all forms of industrial action. At the same time the Board should implement paragraph 1(ii) of the 1981 Pay Understanding.
- (4) On the publication of our report the Chairman of ACAS should bring the parties together to assist the parties to draw up and agree the terms for its implementation.

114. In conclusion we would like to thank all the parties who submitted evidence to us and our Secretary, Mr C L Parsisson.

February 1982

[Signed] McCarthy (Chairman)
E F Choppen
G H Doughty



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DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

Prime Minister

Michael Scholar Esq
Private Secretary
10 Downing Street
LONDON SW1

I thought you might like
to have this in tonight's
16 February 1982

box, to study at greater
length.

Dear Michael,

MCS 16/2
ms

McCARTHY REPORT ON ASLEF DISPUTE

I attach a copy of the McCarthy Report
which we have just received. It is being
publicly released at 15.30 this afternoon.

I am copying this letter and the report
to the Private Secretaries of those Ministers
coming to this afternoon's 17.15 meeting, and
to the Private Secretaries of Sir Robert
Armstrong and Mr Ibbs.

Yours,

Anthony Mayer

R A J MAYER
Private Secretary

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