



REPORT
OF
DECISIONS

By

N. M. Miabhoy,

(Retired Chief Justice, High Court of Gujarat)

Chairman,

KAILWAY LABOUR TRIBUNAL

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CHAPTER I

INTRODUCTION

1.1. By its Resolution No. ERBI 69C01/8 dated 28th January 1969 (*vide Appendix 'A'*) published in the Central Government Gazette Part I, Section I, on 8th February 1969, Central Government appointed me as "Railway Labour Tribunal 1969" and referred the following demands of National Federation of Indian Railwaymen, in regard to which agreement between Railway Board and National Federation of Indian Railwaymen could not be arrived at under the Permanent Negotiating Machinery which is outlined in Railway Board's letter No. E51 FEI-22 dated 29th December 1951 addressed to General Managers of All Indian Railways (*vide Appendix 'B'*):—

(i) Night duty Allowance should be calculated at $1\frac{1}{2}$ times the normal rate of pay to all employees performing duty at night, irrespective of their classification under the Hours of Employment Regulations.

(ii) In respect of workshop staff :

(a) all vacancies, which occurred since the introduction of the incentive scheme should be filled up;

(b) proper proportion of skilled, semi-skilled and unskilled staff should be maintained and other measures taken to ensure adequate scope for promotion to the semi-skilled and unskilled staff;

(c) the posts of supervisory staff in the mechanical workshops should be redistributed amongst various grades in conformity with their responsibilities and an adequate channel of promotion should be provided for them.

(iii) Casual labour on the Railways should be paid wages at the rate of $\frac{1}{30}$ th of the minimum of the time-scale plus appropriate Dearness Allowance applicable to the corresponding categories of staff in regular employment in the Railways.

(iv) The disparity between the hours of work and annual gazetted holidays at present prescribed for clerks at railway stations, sheds and depots on the one hand and those prescribed for clerks in administrative offices on the other should be removed by granting the former the privileges available to the latter. If this is not possible, the former should be monetarily compensated for the extra hours and days of work done by them.

(v) The present Hours of Employment Regulations which govern hours of work, periodic rest and overtime in respect of railway staff, other than those employed in workshops, falling under the definition of "Factories" in the Factories Act, should be completely reviewed.

(vi) All gangmen in the Civil Engineering Department of the Railways should be granted an Arduous Duty Allowance of Rs. 3/- per month.

(vii) The scale of pay of gangmates in the Civil Engineering Department of the Railways should be raised to the skilled grade. Along with this, the scale of pay of keymen and head trolley-men of the Civil Engineering Department should also be suitably enhanced.

(viii) The scale of pay of all running staff should be enhanced.

1.2. I assumed charge as sole Member of the Tribunal on and from 20th February 1969.

1.3. The First Session of the Tribunal was held in Rail Bhavan, New Delhi, on 13th March 1969 to decide the procedure for presentation of cases by Railway Board (hereafter called the Board) and National Federation of Indian Railwaymen (hereafter called the Federation). At this Session, the Board was represented by Sarvashri B.C. Ganguli, Member (Staff), R. Gopala Krishnan, Additional Member (Staff), Kasturi Rangan, Director, Establishment and P.S. Mahadevan, Additional Director, Establishment assisted by other officials and the Federation was represented by Sarvashri A.P. Sharma, M.P., General Secretary, T.V. Anandan, M.P., Vice-President and K.H. Kulkarni, Joint Secretary. The Central Government Resolution dated 28th January 1969 directed that the Board and the Federation should be permitted to present their cases before the Tribunal. At the first Session, I directed the two parties to name their representatives who would represent them in future proceedings.

1.4. I fixed the following schedule for the parties for submitting their respective cases:

(i) Statement of Demands by Federation
6 weeks—by 1st May 1969.

(ii) Written Statement in reply from the Board
6 weeks — by 15th June 1969.

(iii) Rejoinder by the Federation
15 days — by 1st July 1969.

(iv) Filing of documents
15 days— by 15th July 1969.

(v) Next Session of the Tribunal
In the middle of July 1969.

1.5. The Board communicated nomination of Shri P.S. Mahadevan, Additional Director, Establishment, as representative of the Board with Shri P.M. Narsimhan, Joint Director, Establishment, as alternate representative [*vide* its letters No. E(L)69RLT L-2 dated 18th March 1969 and 26th April 1969]. The Federation nominated Shri K.H. Kulkarni, General Secretary, to act as the representative of the Federation

(vide its General Secretary's letter No. RLT/69 dated 21st April 1969). The two representatives were given authority by their respective principals to act as their representatives before me and were given the right to plead and act for them including the right to make admissions on questions of law and fact.

1.6. The Statement of Demands was submitted by the Federation on 3rd May 1969. The Written Statement was filed by the Board on 18th June 1969. The Rejoinder was filed by the Federation on 3rd July 1969. The General Secretary of the Federation, however, requested to extend the time limit for filing documents from 15th July 1969 to 1st August, 1969, which request was granted. Subsequently, the Federation expressed its inability to submit documents within the stipulated time and said that it would file further documents as found necessary with my permission (vide its letter No. ITR/69 dated 1st August 1969).

1.7. During the aforesaid period and even after the submission of Statement of Demands, Written Statement and Rejoinder, a number of representations were received from numerous non-parties, such as All-India Railwaymen's Federation, several regional trade unions and individuals parties. The prayers which were made in their representations may broadly be classified into three categories. Some of these representationists prayed that they should be joined as parties to the proceedings. Some others prayed that they should be allowed to make representations in regard to the terms of reference. Some others prayed that they should be allowed to lead evidence in their regard. These prayers were discussed by me with the representatives of the Federation and the Board at the Second Session held at Ahmedabad on 21st and 22nd August 1969. Both these representatives strongly objected to the grant of any of the above prayers. Therefore, on that day, I decided to issue notices to the Federation and the Board to show cause as to why all or any of the above prayers should not be granted. Intimation in regard to these show-cause notices was also issued to the non-parties who had made the above prayers. The notices were made returnable at the 3rd Session to be held on 25th September 1969. Unfortunately, on account of the disturbed conditions in Ahmedabad, it was not possible to hold the above Session on that date. Therefore, that Session was ordered, in consultation with the parties and non-parties, to be held in Rail Bhavan, New Delhi, on 27th November 1969. During the intervening period also, some more representations were received and intimation was also given to such representationists to remain present at the above Session. As the matter involved intricate questions of law, parties and non-parties were permitted to be represented by advocates to plead their cases for this limited purpose only. At the 3rd Session, 29 representationists were invited to take part in the Session besides the Federation and the Board. Out of these, 23 non-parties appeared either through counsel or their officers or individually. The others chose to remain absent. The Session continued till 1st December 1969. During the currency of the Session, oral arguments were advanced by parties and most of the non-parties. Some of the non-parties submitted written arguments also.

1.8. The main submission of the Federation and the Board was that the Tribunal was a domestic Tribunal appointed under the Permanent Negotiating Machinery to which they were the only two parties and, as such, the question of any other organisation or individuals being made parties to the present proceedings did not arise. Some of the representationists challenged the validity of the Permanent Negotiating Machinery, while others contended that it was a Tribunal under the Industrial Disputes Act, 1947. Some others contended that they should be made parties in the interest of justice, as their interests would be vitally affected by the decisions to be arrived at by the Tribunal. The submissions of All-India Railwaymen's Federation were based on the Permanent Negotiating Machinery itself. Its contention was that it was a party to that Machinery, that it had raised the same or similar disputes before the Board under the very Scheme and that, therefore, it had the same right to be heard on the items of dispute as the Federation and that, unless it was represented before me, complete justice would not be done to railway labour as a whole.

1.9. After fully considering the representations, pleadings and arguments of parties and non-parties, I came to the conclusion that the Tribunal was a creation of the Permanent Negotiating Machinery Scheme and, as such, I could not transcend its provisions and grant the prayers of the various non-parties. Accordingly, I passed an Order, dated 18th December 1969 (*Appendix 'C'*) whereby the prayers of all the non-parties were rejected, giving reasons for the decision.

1.10. The 4th Session of the Tribunal was held in Rail Bhavan, New Delhi, on 20th January 1970, in which the following business was transacted :

- (i) The Federation was called upon to submit the rest of the documents proposed to be filed by it by 5th February 1970 finally. It was also reminded to expedite its comments on the statement of vacancies in regard to artisan categories in workshops furnished by the Board.
- (ii) The Board handed over a list of four witnesses proposed to be examined by it in support of its case. The Federation also handed over a list of 15 witnesses to be examined by it stipulating that further lists would follow in due course. At the request of the Federation, I extended the time-limit to 5th February 1970 for its filing a complete list of witnesses.
- (iii) The following procedure was evolved for recording evidence in consultation with the parties :—
 - (a) Evidence will be recorded and completed itemwise to be concluded by arguments in respect of each item.
 - (b) The Federation will lead its evidence first, followed by the Board for each item separately.
 - (c) So far as Term of Reference No. 1 (Night Duty Allowance) was concerned, both the parties expressed their desire

not to lead any evidence on the subject. Accordingly, I decided to proceed straightway with the hearing of the arguments on this Term at the next Session.

1.11. The Federation submitted (*vide* its letter No. RLT-69/1 dated 5th February 1970) :

- (i) Its comments on the statement of vacancies in regard to artisan categories in various workshops furnished by the Board;
- (ii) further list of witnesses to be examined on its behalf;
- (iii) list of books and publications that the Federation proposed to quote or refer to, apart from those already mentioned in the Statement of Demands and the Rejoinder, at the time of arguments on the various Terms; and
- (iv) three documents pertaining to staff strength, productivity and duty lists.

1.12. The 5th Session of the Tribunal was held in Rail Bhavan, New Delhi, from 24th to 26th February 1970. I heard arguments of both the parties in respect of Term of Reference No. 1 pertaining to the payment of Night Duty Allowance to railway employees. The Federation's case in support of its demand was opened by Shri K.H. Kulkarni. This was followed by reply from Shri P. S. Mahadevan on behalf of the Board. Shri K.H. Kulkarni gave a further reply on behalf of the Federation.

1.13. The 6th Session of the Tribunal was held in Bombay from 6th to 9th April 1970 and at Madras from 11th to 15th April 1970 to record evidence of witnesses in connection with Term of Reference No. 2 pertaining to workshop staff and to inspect some workshops. At this Session, only 6 out of 8 witnesses were examined and the remaining two were not examined as the Federation failed to produce them. Accompanied by the two parties' representatives, I inspected the following workshops :

At Bombay :

- (i) Carriage Workshops of Western Railway at Lower Parel.
- (ii) Loco Workshops of Central Railway at Parel.

At Madras :

- (i) Shell and Furnishing Divisions of the Integral Coach Factory, Perambur.
- (ii) Carriage Repair Shop of the C & W Workshops, Southern Railway, Perambur.
- (iii) Loco Erecting Shop of the Loco Workshops, Southern Railway, Perambur.

1.14. The 7th Session of the Tribunal was held in Rail Bhavan, New Delhi, from 6th to 11th May 1970 and further continued in Simla from 15th to 20th May 1970 in connection with Term of Reference No. 2 pertaining to Workshop staff. At this Session, evidence of 6 witnesses on behalf of the Federation

and one on behalf of the Board was recorded. After conclusion of evidence, I heard arguments of the parties.

1.15. The 8th Session of the Tribunal was held at Ahmedabad from 16th to 18th July 1970 in connection with Term of Reference No. 3 pertaining to payment of wages to casual labour. I heard arguments of both the parties. After hearing arguments, I passed an order, dated 18th July 1970, granting liberty to both the parties to adduce such evidence, oral or documentary, as they wish, on nine topics specified therein and to submit the relevant documents, if any, and names of witnesses within 10 days. Both the parties requested for 2 months' time for compliance of my order, which request was granted.

1.16. During August-September 1970 both the parties requested for certain additions and alterations in the list of witnesses. This request was granted.

1.17. The 9th Session of the Tribunal due to be held at Ahmedabad on 12th August 1970 was postponed at the request of the Board. It was then held from 1st to 3rd September 1970 to record evidence of witnesses and to hear arguments in connection with Term of Reference No. 4 pertaining to Working Hours and Holidays for Clerical Staff in Field Establishments.

1.18. The 10th Session of the Tribunal was held in Rail Bhavan, New Delhi, from 17th to 22nd September 1970 to record evidence in connection with Terms of Reference Nos. 6 and 7, pertaining to Gangmen, Keymen, Mates and Head Trolleyman of the Civil Engineering Department. At this Session, evidence of witnesses of both the parties on the aforesaid items was recorded. Incidentally I reminded the parties for submission of information and list of witnesses in connection with Term of Reference No. 3, pertaining to Casual Labour in terms of my Order, dated 18th July 1970.

1.19. The 11th Session of the Tribunal was held in Rail Bhavan, New Delhi, from 14th to 21st October 1970 to hear arguments in connection with Terms of Reference Nos. 6 and 7 pertaining to Gangmen, Keymen, Mates and Head Trolleyman of the Civil Engineering Department.

1.20. The Federation submitted for my information only a copy of its letter No. RLT/69(1) dated 24th October 1970 addressed to the Honourable Minister for Railways in regard to the date from which effect was to be given to my decisions.

1.21. During October 1970, both the parties again asked for certain additions and alterations in the list of witnesses in respect of Term of Reference No. 8, pertaining to Running Staff, which request was granted.

1.22. The Federation submitted a communication No. RLT/69 dated 7th November 1970 (*vide Appendix 'D'*), praying that my decisions should be given retrospective effect from 13th September 1968, *i.e.* the date on which it was decided to refer the items in question to an *ad hoc* Tribunal under the P.N.M.

Scheme. It also prayed that this question should be taken up for decision at the next Session to be held at Bombay from 16th November 1970 onwards. The Federation, however, later withdrew the above prayer saying that the parties had, in the meantime, agreed to negotiate the matter mutually and directly between themselves (*vide* Deputy Director, Establishment, Railway Board's letter No. E(LR)70NM1-15 dated 21st December 1970) (*Appendix 'E'*).

1.23. In the same communication, the Federation further prayed that each Term of Reference should be decided separately and that each decision should be separately announced as and when hearing thereon was completed. The Board's representative had no objection to this course being followed. After considering pros and cons of the matter, I rejected the Federation's prayer on the ground that the decisions on the various items were likely to have mutual repercussions.

1.24. The 12th Session of the Tribunal was held at Bombay from 16th to 26th November 1970 to record evidence in connection with Terms of Reference No. 3 (Casual Labour) and No. 8 (Running Staff). At this Session, 6 witnesses on behalf of the Federation and 2 on behalf of the Board were examined.

1.25. The 13th Session of the Tribunal was held at Bombay from 17th to 28th December 1970 —

- (i) to complete remaining evidence of one witness in connection with Term of Reference No. 8 (Running Staff);
- (ii) to hear arguments in connection with Term of Reference No. 3 (Casual Labour) arising from evidence subsequently recorded; and
- (iii) to hear arguments in connection with Term of Reference No. 8 (Running Staff).

1.26. The 14th Session of the Tribunal was held in Rail Bhavan, New Delhi, on 20th January 1971, to draw up a schedule for hearing Term of Reference No. 5 (Hours of Employment Regulations). The Federation requested for permission to make certain modifications in the list of witnesses, which request was granted, subject to the Board being also permitted to do so. I decided that the Federation would furnish its list to me and to the Board simultaneously by 1st February 1971 and the Board would file its list within a week thereafter. I granted also the request of the Federation to extend time to file list of additional documents on or before 10th February 1971. Similarly, I permitted the Board to file a similar list of documents on or before 15th February 1971.

1.27. In the absence of the final list of witnesses and documents, I decided to defer the question of framing a schedule for subsequent Sessions on Term of Reference No. 5.

1.28. The 15th Session of the Tribunal was held in Rail Bhavan, New Delhi, from 16th to 25th February 1971 to record evidence of the Federation's witnesses

in connection with Term of Reference No. 5 (Hours of Employment Regulations). Out of 6 witnesses proposed for this Session, only 5 were examined, as the remaining one was dropped by the Federation. I reminded the parties to submit their final list of witnesses and documents on or before 18th February 1971.

1.29. The 16th Session of the Tribunal was held in Rail Bhavan, New Delhi, from 10th to 31st March 1971 to record evidence of the Federation's witnesses in connection with Term of Reference No. 5 (Hours of Employment Regulations). At this Session, 10 witnesses on behalf of the Federation were examined.

1.30. The 17th Session of the Tribunal was held in Rail Bhavan, New Delhi, from 26th April 1971 to 7th May 1971 to record evidence of remaining witnesses in connection with Term of Reference No. 5 (Hours of Employment Regulations). At this Session, 6 witnesses on behalf of the Federation and 3 witnesses on behalf of the Board were examined.

1.31. The 18th Session of the Tribunal was held in Rail Bhavan, New Delhi, from 21st to 29th June 1971 to record evidence of remaining 3 witnesses of the Board in connection with Term of Reference No. 5 (Hours of Employment Regulations).

1.32. The 19th Session of the Tribunal was held in Rail Bhavan, New Delhi, commencing from 24th August 1971 to hear arguments of parties in connection with Term of Reference No. 5 (Hours of Employment Regulations). The arguments were opened by the Federation's Representative, but this Session had to be adjourned to 9th November 1971 and again to 10th January 1972, owing to the illness of the Federation's representative. The concluding Session was then finally held from 10th January 1972 to 14th February 1972 to complete hearing of arguments.

1.33. A list of witnesses examined by parties before the Tribunal in connection with various Terms of Reference appears as Appendix 'F'.

1.34. In each of the following chapters, I have discussed one demand of the Federation and recorded my decisions in regard thereto, giving reasons for my decisions. At the end of each chapter, I have summarised the decisions in regard to the Term of Reference considered. However, I may mention that such summary should not be taken as authentic version of decisions. In case of any inconsistency or conflict between the text of the Report recording the decision and such summary, the decision recorded in the text of the Report should be taken as authentic.

1.35. Before recording my decisions on various matters, I wish to convey my appreciation and gratitude to the Board and the Federation for their spontaneous and willing help and their unstinted co-operation in the conduct of the proceedings and for completing the task assigned to me, covering not only several departments of railways but also involving welfare and living and working conditions of railway servants of several categories numbering several lacs. I am particularly grateful to Shri P. S. Mahadevan, Additional Director, Establishment, Railway Board and Shri K. H. Kulkarni, General

Secretary of the Federation, who, as the accredited representatives of the two parties, very ably presented their respective cases and rendered me great and valuable assistance in understanding and appreciating the complex and intricate problems which involved high stakes both for Railway Administrations and their staff. But for their stupendous industry, able marshalling of facts, fair and competent presentation of their respective cases and able and sustained arguments, I do not think I would have been able to carry to fruition the huge task assigned to me.

136. I have to particularly mention here the alround and valuable assistance rendered by the

energetic and painstaking Secretary of the Tribunal Shri Anand Prakash who, with his fund of varied experience and intimate knowledge of men and matters on Railways, proved to be a great asset to the organisation.

1.37. I would also like to record my profound appreciation of the excellent work and devotion displayed by members of my office staff who were always found to be very prompt, willing and helpful in the discharge of their respective duties and particularly the work done by Shri B.N. Dholakia, Private Secretary, who carried the main burden of transcribing the texts of my decisions neatly and promptly.

TERM OF REFERENCE NO: 1—NIGHT DUTY ALLOWANCE

Preliminary

2.1 The first Term of Reference is as follows :

“Night Duty Allowance should be calculated at one and half times the normal rate of pay to all employees performing duty at night irrespective of their classification under the Hours of Employment Regulations.”

2.2 From pleadings and arguments addressed at the time of hearing of this Term of Reference, it appears that the language in which it is couched does not bring out prominently all the points on which the parties are at variance. The points which emerge from pleadings and arguments are as follows :

- (1) That Night Duty Allowance (hereinafter called the Allowance) should be granted to all employees performing night duty irrespective of their classification under the Hours of Employment Regulations (hereinafter called HER) and irrespective of the upper basic pay limit of Rs. 470/- per mensem.
- (2) That the Allowance should be calculated at one and a half times the normal rate of pay.
- (3) That the expression “normal rate of pay” should include within it certain emoluments which are at present excluded therefrom whilst calculating the Allowance.
- (4) That the increases in the Dearness Allowance since 1967 should be reflected in the determination of the normal rate of pay.

2.3. From the above summary, it is clear that the principal demand of the National Federation of Indian Railwaymen (hereinafter called the Federation) is that the Allowance should be granted to all railway employees irrespective of their classification under the HER and irrespective of the upper basic pay limit of Rs. 470/- per mensem. At present the position is that the Allowance is granted only to those Class III and Class IV railway employees who are classified under the HER as (1) intensive, and (2) continuous, provided their basic pay does not exceed Rs. 470/- p.m. Thus, at present, it is not granted to (i) those intensive and continuous workers whose basic pay exceeds Rs. 470/- p.m., and (ii) those employees who are classified under the HER as (1) the Essentially Intermittent staff (hereinafter called EI), and (2) the Excluded staff. At present, the Allowance is also granted to Class III and Class IV railway servants who are working in Railway Workshops and who otherwise are governed by the provisions of

the Factories Act. However, the Allowance is granted only to five categories in Railway Workshop enumerated in the letters Nos. PC-67/JCM/1 of the Railway Board dated 13-4-67 and 6-5-67 respectively, which appear at Annexures III and IV of the Railway Board's Reply, with the same limitation that their basic pay does not exceed Rs. 470/- p.m. The total number of railway employees about the time of the Reference was roughly thirteen and a half lac. The number of employees who get the Allowance at present is roughly eleven and a half lac and those who are excluded from its benefit are thus roughly two lac. It is for the benefit of these two lac railway employees that the present demand is made.

2.4. The principal demand is grounded on the submission (i) that night work involves biological, social, domestic and other handicaps which day work does not suffer from; (ii) that the Allowance is being granted by almost all railway systems in the world and (iii) that industrial law is that all night workers must be compensated for such handicaps by grant of the Allowance.

2.5. The Railway Board (hereinafter called the Board) resists the demand on the general submission that the grant of the Allowance is not universally recognized in industrial law; that, in any case, railways being a continuous industry which must run round the clock, its employees are not entitled to any such Allowance; that though night work may involve some handicaps, they are not of such a nature as necessarily require to be compensated for. The Board, however, says that it does not make this submission with a view to withdrawing the Allowance such as is being granted at present and makes it clear that it does so only with a view to showing that such Allowance as is being granted today is not necessarily granted to compensate the supposed handicaps but that it is being granted to compensate for the rigour of night work done by the categories to which it is actually being granted. The Board contends that, under these circumstances, the real point which requires to be decided is whether the restriction of the payment of the Allowance to certain categories is or is not justified. In the course of arguments, it transpired that the restriction of the basic pay limit of Rs. 470/- p.m. excluded hardly about fifty to seventy members of railway staff. Mr. Mahadevan, on behalf of the Board and with its consent, gave an undertaking on this subject which was recorded in the following terms in his own words :

“In so far as railway employees covered by the Hours of Employment Regulations are concerned, the admissibility of Night Duty Allowance at present restricted to the pay limit

of Rs. 470/- will be enlarged to cover all continuous and intensive workers, irrespective of pay limit and at rates at present prescribed for the topmost slab."

In view of this undertaking, Mr. Kulkarni did not address any further arguments on the question of the upper basic pay limit of Rs. 470/- p.m. Both the sides agree that the above concession should be recorded as a part of decision of the Tribunal. In the course of arguments, I inquired from Mr. Kulkarni, the Representative of the Federation, as to who were the workshop staff who were excluded from the benefit of the Allowance by reason of its restriction to five categories. In the Rejoinder, the Federation has mentioned only one category of Stores and Production Organization as being excluded from its benefit. I understand that today the position is that the five categories enumerated for the benefit of the Allowance include all categories in workshops who are eligible for payment of the Allowance including the Stores and Production Organization. Mr. Kulkarni and Mr. Mahadevan undertook to look into the matter and furnish to me a list of categories of workshop staff excluded from the benefit of the Allowance. However, till the last date, they did not give me any list as undertaken by them.

History of night duty allowance

2.6. In order to appreciate the arguments of both the sides, it is necessary first to mention the history of the rates governing grant of the Allowance to the above railway employees. In 1946, the Government of India in the Labour Department referred for adjudication to Mr. Justice Rajadhyaksha of the then Bombay High Court (hereinafter called the Adjudicator) four points which were in dispute between certain Indian Government Railways and their workmen. The points so referred did not directly include the question of the grant of the Allowance. However, the All-India Railwaymen's Federation, the representative of the workmen, submitted to the Adjudicator that "night duty should be discouraged by (1) grant of a higher pay and (2) introduction of shorter hours." It is common ground that, prior to the above demand, none of the Indian Railways, which were parties to the above dispute, granted the Allowance to its workmen. The Adjudicator rejected the claim for introduction of shorter hours on the grounds that such introduction would entail longer hours of work during day shifts and would lead to change of shifts at awkward hours. This finding is not challenged by the Federation. The arguments before me have proceeded on the basis that railway is an industry in which introduction of shorter hours is not feasible. The Adjudicator rejected the claim for higher rate of pay on two grounds : (1) that as night work is inherent in railway duty, pay should be held to cover such liability, and (2) that the amount of work at night is less than that during day. The Adjudicator, however, mollified the rigour of the above decision by recommending (1) rotation among workers, and (2) transfer of employees not so rotated after completion of one or two years of work to some other stations

where they would not be subject to continual night duty. In 1957 the Commission Of Inquiry On Emoluments And Conditions Of Service Of Central Government Employees presided over by Mr. Justice Jagannath Das of the Supreme Court (hereinafter called the Commission) was appointed. The Commission considered in Part IV, Chapter XXXV, paragraph 15 at page 400 of its Report the question of weightage to be given for night duty. It observed that there was no uniform practice on that subject. However, it also observed that for certain categories of P & T Staff, a weightage of 33½ per cent and for certain categories of Customs Staff a weightage of 50 per cent were in vogue. The Commission further observed that no weightage was given on railways for the reason given by the Adjudicator. The Commission held that, if the reason given by the Adjudicator was a valid ground for refusing weightage for night duty on railways, it should also be an equally valid ground for refusing weightage in Posts & Telegraphs and Customs Departments. The Commission did not agree with the reason given by the Adjudicator and made the following recommendation :

"We do not think it is fair to deny weightage altogether and we recommend that when night duty is such as to require continuous application it should be allowed weightage of 10 minutes for every hour worked; for instance, six hours' night duty should be treated as equal to seven hours of day duty. Weightage should not, however, be given to employees whose weekly working hours have been fixed taking into consideration the fact that they would not be eligible for this concession, and for whom weightage for night duty is thus in effect provided in the shape of reduced weekly working hours."

The Government of India accepted with effect from 1st August 1962 the above recommendation of the Commission with a condition, the condition being that weightage for night duty should be allowed in regard to those staff whose duties at night involved continuous application to work and not for all staff who worked in night shift in general. Consequent upon the above acceptance, detailed instructions were issued by the Board in which it specified categories of staff whose night duty was held to involve continuous application and who were thus eligible for weightage for night duty. These instructions, while specifying categories of staff who were eligible for weightage for night duty, laid down in regard to some categories certain yard-sticks which they were required to satisfy in order to be eligible for the above weightage. As a result of these instructions, the Allowance came to be granted only to some categories of intensive and continuous workers. The subject was again taken up for consideration in the National Council. The latter decided that it should be discussed by the Federation with the Board. The Board and the Federation discussed the matter at a meeting held on 6th April 1967. A decision was taken at this meeting that the Allowance should be granted to all staff governed by the HER except the EI and the Excluded staff and that it should be paid to the five enumerated categories of workshop staff also.

As a result of this decision, the Board issued orders contained in their letters dated 13-4-1967 and 6-5-1967 referred to above. These orders are now in force and govern the railway staff. As a result of these orders, the position regarding grant of the Allowance is as stated in para 2.3 above.

2.7. I propose to consider the problem posed from two aspects : (1) whether there is or is not justification for restricting grant of Allowance to the categories mentioned above, and (2) even if it is so, whether, on general principles, the denial of the Allowance to all railway employees is or is not justified.

Principle of continuous application

2.8. From the above resume' of the rules governing grant of the Allowance to railway employees, it is clear that its ratio is to be found in the recommendation of the Commission. The Commission did not have to consider the problem of grant of the Allowance specifically for railway employees alone. It had to consider it for all Central Government servants. The Commission was aware that no allowance was being granted to railway employees. It was also aware of the reason why it was not being so granted. Instances of two Departments of the Central Government which did grant the Allowance to some categories of their employees were also before the Commission. After considering these materials, the Commission came to the conclusion that grant of the Allowance should not be denied to Central Government servants. However, the Commission did not recommend grant of the Allowance to all Central Government servants but restricted it to only those employees whose work involved continuous application. Thus the Commission did not make an unqualified or absolute recommendation. It does not appear to have given any reason for the qualification. Mr. Kulkarni attacks the qualification on this ground. However, I have no material on the basis of which I can say that the qualification is not justified. In fact, the reason for the recommendation is implicit in its observation that the Allowance was being granted only to certain categories of staff in the two Departments. It is not improbable that the qualification is grounded on the basis of a study of the nature of work which those categories of Government servants in the two Departments performed. Having regard to the fact that this qualification is not restricted to railway servants in particular but is meant for all Central Government servants in general, it is clear that it will be improper to ignore the qualification when applying the Commission's recommendations for grant of the Allowance in relation to railway servants. Such an approach will place railway servants on a higher pedestal than the rest of the Central Government servants. In this connection, it is noteworthy that, as regards a continuous industry, one of the views in industrial law is that when night workers rotate with day workers, no allowance should be granted on the basis of the assumption that the pay structure reflects payment for performance of night duty. It is equally noteworthy that the continuous and the intensive workers not only

rotate but, under the recommendation of the Commission, earn the Allowance as well. In any case, in my opinion, so long as grant of Allowance is grounded on the above recommendation, it will be improper to ignore the qualification introduced by the Commission. Moreover, it is significant that the Government did not accept the above recommendation in its entirety. It accepted it with a modification already mentioned. Therefore, it is clear that, when the Board was required to work out in practice the recommendation as modified, it was justified in determining whether duty discharged by a particular category of servants did or did not satisfy the criterion of continuous application. At first, the Board laid down certain yard-sticks which were to be satisfied for earning the Allowance; and under those yard-sticks, all intensive and continuous workers did not earn the Allowance. I am not concerned as to whether the requirement of those yard-sticks was or was not justified. As a result of negotiations between the Board and the Federation, the above yard-sticks were abolished and the criterion of continuous application was adjudged with reference to the classification of railway employees under the HER which was readily available to both the sides. It appears that the negotiators thought that duty discharged by intensive and continuous workers satisfied the criterion of continuous application and that discharged by EI and Excluded staff did not satisfy it. Having regard to the duties performed by these four categories of railway employees, I do not think any exception can be taken to the above decision at least so far as EI category is concerned. "Intensive employment" as defined in section 71-A clause (d) of the Indian Railways Act (hereinafter called the Act) is employment which has been declared to be so by the prescribed authority on the ground that "it is of a strenuous nature involving continued concentration or hard manual labour with little or no period of relaxation." The Act classifies all work to be continuous which is neither excluded nor essentially intermittent nor intensive. Thus the definition of "continuous employment" is residual. Continuous work is recognized as that "which can proceed without forced period of inaction" [Vide para 3(5) of Section I of the Book entitled "The Hours of Employment Regulations" issued by the Western and the Southern Railways]. Employment is defined in section 71-A clause (b) of the Act as Essentially Intermittent when it has been declared to be so by the prescribed authority on the ground that "the daily hours of duty of the railway servants normally include hours of inaction aggregating to six hours or more (including at least one such period of not less than one hour or two such periods of not less than half an hour each), during which the railway servant may be on duty, but is not called upon to display either physical activity or sustained attention." "Employment" is defined in the Act to be Excluded when it belongs to any one of the categories specified in the Act or the Rules or by the Central Government. All the provisions of the HER do not apply to Excluded railway servants. Broadly speaking, under the Excluded category come the following railway servants : (1) supervisory staff, (2) staff employed in a confidential capacity; (3) some categories of the staff of the Health

& Medical Department; (4) "C" Class gatemen; (5) bungalow peons; (6) saloon attendents, and (7) care-takers of rest houses, etc. Leaving aside for the present the Excluded staff and concentrating one's attention only on Essentially Intermittent staff, in my opinion, it is difficult to disagree with the Board that the criterion of continuous application does not apply to these servants. The ground on which these servants are classified as essentially intermittent makes it amply clear that the work which they have to perform is not of a continuous nature and though they are required to be present on duty throughout the hours for which they are rostered and though if they are booked on night duty, they cannot sleep during the periods of inaction, nevertheless, by no stretch of imagination, can their work be stated to require continuous application. I cannot agree with the proposition that their work assumes the characteristic of continuous application by virtue of the fact that it comes to be performed at night. However, the case of the Excluded staff is not on a par with that of the essentially intermittent staff. It is true that, by far and large, the work turned out by this category is of a non-continuous nature. The special feature in regard to the employment of the majority of the Excluded staff is that they are required to be on duty round the clock so that they must be available for performance of night duty throughout the year. But though this is so, not only their work is light but they can also enjoy sleep unless they are called upon to do work which requires them to keep awake. In the case of bungalow peons, caretakers, saloon attendants and "C" Class gatemen, except for the rare occasions when they would be required to work at night at a stretch, they would not be rendering any continuous duty. They would be rendering only such duty as occasions interruptions in their sleep. However, the cases of some sub-categories of the Excluded staff, especially those of supervisory, medical and confidential staff, require special consideration. The supervisory staff classified as Excluded may be divided into two sub-categories : (1) those supervisors who are not rostered in night shifts but who work at night in exercise of the choice given to them of adjusting their hours of work, and (2) those supervisors who are assigned night shifts and whose hours of work are rostered. Amongst the latter kinds of supervisors are charge-men in workshops, matrons, sisters-in-charge and mid-wives in certain circumstances amongst the medical staff. There is no doubt that the work of the latter involves continuous application and the circumstances under which they work, even though of a supervisory nature, are the same in which other continuous workers perform their duty. Even on the assumption that their classification as Excluded is justified under the HER, I am unable to agree that this classification can have any relevance for the purpose of determining the question whether their work involves continuous application as envisaged by the recommendation of the Commission. For the same reasons, I have also no doubt that duty performed by confidential staff also involves continuous application. It cannot be denied that, but for the fact that such staff is excluded by virtue of the statutory definition, their work involves continuous application. Not only this but their case stands somewhat on a better footing

than that of those servants who are at present classified for the benefit of the Allowance. This sub-category of staff has to work during the day. They will be called upon to perform night duty only if they are specially sent for. There is no doubt whatsoever that, when called upon to perform night duty, their work will be of a continuous nature inasmuch as, having been summoned for special work, such work will be of a continuous nature. The case of the first kind of supervisors stands slightly on a different footing. If they do duty at night, it will be by adjusting their hours of work during day. They are not assigned night shifts nor are there any rostered hours for them. They perform night duty by choice in execution of their duty in the post of a supervisor which post gives them a certain status and pride of place over other railway employees. Moreover, having regard to the fact that night duty, if at all, will be performed by choice, it will create administrative difficulties if any allowance were ordered to be granted to them.

2.9. For the above reasons, I have come to the conclusion that on the application of the present criterion of continuous application, the denial of the Allowance to the following sub-categories of Excluded staff is not justified and that they deserve to be granted such Allowance : (1) those members of the supervisory staff who are rostered in night shifts, (2) those members of the medical staff who are similarly rostered, and (3) members of the confidential staff. For the same reasons, I have also come to the conclusion that denial of the Allowance to the Essentially Intermittent staff and other categories of the Excluded staff is justified. In view of this conclusion, in my opinion, the present classification based on HER, generally, complies with the criterion laid down by the Commission and except the servants in the sub-categories of supervisors and confidential and medical staff whose duty is otherwise continuous, does not exclude any category from grant of the Allowance which otherwise will be entitled to under the above recommendation.

Controversy regarding basis of Night Duty Allowance

2.10. Perhaps, realising the above infirmity in the Federation's case, Mr. Kulkarni chooses to attack the very basis of the recommendation of the Commission and contends that the criterion of continuous application is irrelevant. Mr. Kulkarni further contends that the Allowance, as its name implies, is meant to be given for performance of duty at night. He maintains that this is so because night duty is irksome, unnatural, disagreeable, uncomfortable and even deleterious to health and subjects the night worker to social and domestic disadvantages which his counter-part in the day shift does not suffer from. He says that a continuous or intensive night worker performs exactly the same kind of duty which a continuous and intensive day worker does. Each worker receives his pay-packet for exactly the same kind of work which each does either during day or night. He contends that the only difference between a day worker and a corresponding night worker is that the latter performs his duty during night and that it is for the latter reason alone that, under industrial law, or on broad principles, the night

worker has to be compensated for. On the other hand, Mr. Mahadevan contends that the basis for the payment of the Allowance is not merely the fact that duty is performed at night but that it is so because the kind of duty performed is rendered more rigorous by virtue of the fact that it is performed at night. Therefore, according to Mr. Mahadevan, night duty alone is not the reason for grant of the Allowance but the real reason is the rigour of the duty performed under night conditions. Mr. Mahadevan further contends that the principle of compensation for night duty is not universally accepted and that, therefore, all night workers are not entitled to compensation as a matter of right. Though he does not agree that night work involves physiological, social and domestic handicaps, he contends that, even on the assumption that it so does, in the case of servants who are excluded from its benefit, those handicaps are not more than what their counterparts suffer from during day. Alternatively, he maintains that, the nocturnal handicaps of night workers are counter-balanced by the diurnal handicaps of their day counter-parts. The above contentions compel me to consider the claim for the Allowance on its own merits *de hors* the recommendation of the Commission. The Board does not contend that the Reference precludes my undertaking such a task. In fact, the first Term of Reference is broad and elastic enough to require me to consider the problem on its own merits and permits the Federation to claim the Allowance *de hors* the above recommendation.

Handicaps in night work

2.11. Mr. Kulkarni heavily relies on a passage from Dr. Fredrick S. Lee's Book entitled "The Human Machine and Industrial Efficiency" which passage is reproduced by the Federation in its Statement of Demands. He also relies on the observations made by Watkins and Dodd in their Book entitled "Management of Labour Relations", First Edition, page 523, which observations are reproduced by their Lordships of the Supreme Court in their judgement in the case of *Pfizer (Private) Ltd. Bombay and Its Workmen* reported in Labour Law Journal, Volume I (1963) page 543. Dr. Lee's opinion is that man is a diurnal animal; that his body needs stimulus of light; that his body is adapted to atmospheric conditions of the day; that the bodily vigour is low in the early morning and that, on the whole, night work is more deleterious than day work. He also opines that man being a diurnal animal, any attempt to change his innate habits is bound to interfere with his physiological processes and that day's recuperation from night work is rarely equal to night's recuperation from day work. He further opines that night work entails diminution of sleep. According to Watkins and Dodd, it is unphysiological to turn night into day and, thereby, deprive body of beneficial effects of sunshine and that human organism revolts against such a procedure. They further add that night work leads to unnatural times of eating, resting, sleeping and is less efficient because of the failure of the worker to secure proper rest and sleep by day. Mr. Kulkarni also relies upon certain extracts from the Encyclopaedia of Social Science which advocates night work. One of the extracts, which is reproduced in *Pfizer's* case (*supra*), says

that group working during day-light hours is normal and that during night is abnormal. Mr. Kulkarni also says that night work deprives the worker of participation in domestic and social activities and curtails his entertainment and recreational facilities. On the other hand, Mr. Mahadevan contends that the above views are not accepted universally and that, in any case, the views expressed by the above authors should not be applied to Indian conditions without critical examination. According to Mr. Mahadevan, weather conditions in India are more pleasant at night than during day and that night workers have to perform their duties outdoor or partially outdoor; that the Adjudicator did not accept that night work must entail grant of the Allowance; that the Bombay Textile Labour Inquiry Committee in its Report, made in the year 1940, also rejected a similar claim and that no Allowance is paid by U.S. Railways, the largest railway system in the world.

2.12. In my opinion, though the opinion expressed by the above authors represents an extreme view and though night work in its entirety may not be regarded as deleterious inasmuch as a number of functions are performed by mankind all over the world in the early hours of night and, in countries like India, even in the hours just before dawn, there is some force in the view that, in any case, work between mid-night and 5-00 A.M. is irksome and, on the whole, has a deleterious effect on the human system. There is also some force in the argument that, having regard to the conditions in which the workers live, the sleep which they enjoy during day may not be as sufficient, recuperating and refreshing as it would be during night. There is also some force in the argument that night work, in any case during the hours between mid-night and 5-00 A.M., is unnatural. There is also some force in the argument that some social and domestic handicaps are suffered by night workers which are not so suffered by day workers. Though there may be difference of opinion as to the intensity of irksomeness at all hours of night work, in my opinion, it cannot be denied that night work, on the whole, is irksome at least between mid-night and cock-crow. That night work is irksome has been recognized even by those who have refused to advocate grant of the Allowance. The Adjudicator, for example, implicitly recognizes the irksomeness of night duty by recommending rotation and transfer. Similarly, the Bombay Textile Committee also endorsed the same view by recommending rotation of hours for night duty and prohibition of night shifts between mid-night and 7-00 A.M. Both legislative and judicial opinions have also recognized the irksomeness and unnaturalness of night work. The Factories Act prohibits employment of women and children in night shifts. Not only some industrial awards prohibit the same but they also discourage employment of old and infirm workers for night duty. The Board itself has recognized irksomeness and unnaturalness of night work by directing that attempt should, wherever possible, be made to arrange that men employed in night duty alternate with those working in day shifts and that, where adequate relief cannot be so granted, men should be transferred after completion of one or two years' service to some other places where they will not be subject to continual

night duty. The HER provide that running staff shall be accorded in a month four periods of rest of thirty consecutive hours or five periods of twenty-four continuous hours including a full night in bed. Even in the case of E.I. category, provision is made in HER for according a weekly rest of twenty-four consecutive hours including a full night. Under the circumstances, in my opinion, Mr. Kulkarni is right in his submission that it is night work which should be distinguished from day work and that night work is irksome, unnatural, disagreeable and uncomfortable. There is some force in the argument that night duty entails social, domestic, entertainment and recreational handicaps. There is no doubt that, a night worker's hours of eating, resting and sleeping are unnatural; that his hours of social intercourse are restricted and conflict with those of other men; that his domestic life is disturbed; that his opportunities for contact with his wife, children and relatives are less and that his recreational and entertainment facilities are curtailed. There is also no doubt that all these handicaps are aggravated for a worker whose hours of duty range from mid-night to early dawn.

Industrial law

2.13. The above conclusions bring into prominence the question as to whether night work itself should be compensated for or not. On this problem, industrial awards have divided industries into two broad categories and industrial tribunals have reached their conclusions on the basis of such a division. Industrial awards divide industries into continuous and non-continuous, that is, those industries which, for technical or other reasons, must necessarily work round the clock and those in which night shifts are undertaken for profit motive. Although all departments of railways cannot be considered to be continuous in the above sense, there is no doubt whatsoever that railway industry is, by far and large, a continuous industry. Railway traffic must move day and night if it is to serve efficiently the purpose for which it is meant. The claims made for night allowance in continuous industries have come up for industrial adjudication in a number of cases. This problem arose for decision in *Fertiliser & Chemicals Travancore Ltd., v. Their Workmen*, reported in Labour Law Journal, Volume II (1951) page 211; *Tata Oil Mills Co. Ltd. v. Their Workmen*, reported in Labour Law Journal, Volume I (1952) page 291; *Abdul Sattar v. Kirlampudi Sugar Mills Ltd.*, reported in Labour Law Journal, Volume II (1952) page 375; *Firestone Tyre & Rubber Co. of India Ltd. v. Their Workmen*, reported in (1952) L.A.C. page 509; *Bombay Port Trust Employees Union v. Bombay Port trust*, reported in Labour Law Journal, Volume II (1956) Page 197, and *Hindu, Madras v. Its Workmen*, reported in Labour Law Journal, Volume I (1958) Page 163. Broadly speaking, it is held in all these cases that the Allowance is not permissible in continuous industries. The grounds which are given in support of the decision are (1) that the pay structure in the continuous industry must be assumed to include payment for performance of night duty, and (2) that night duty is being performed by workers by rotation. It will be observed that,

in all these cases, emphasis is laid on the assumption that the pay structure includes compensation for night duty. It is on this assumption mainly that the Tribunals have come to the conclusion that the Allowance was not payable, they having also taken into consideration the fact that night work was being done in rotation. None of these cases, therefore, can be regarded as a true guide in a case where the pay structure in fact does not include any grant for night duty. It is clear that if the pay structure does not include any payment for such duty, then, different considerations will arise. In the above cases dealing with continuous industries, rotation has been regarded as a ground for denial of the Allowance in conjunction with the finding that the pay structure reflects payment for night duty. In cases of non-continuous industries, night duty has always been regarded to merit a night differential. Industrial awards justify a night differential in such cases because (i) night duty was not a condition of service; (ii) night duty was not contemplated when service was joined, and (iii) night duty was introduced to earn more profit.

2.14. In industrial law, night differentials have taken the following forms : (1) compensation or extra wage, (2) restricted hours of working, (3) rotation, and (4) a combination of any two of these three differentials.

2.15. Now, so far as the Indian railway system is concerned, there is no doubt whatsoever that the present pay structure does not include any payment for night duty. The present pay structure is based on the recommendations made by the Commission. The elements which go to determine wage have been mentioned by the Commission in its Report in paragraphs 1 to 34 of Chapter IV. Mr. Mahadevan concedes that those elements do not include any compensation for performance of night duty. Under the circumstances, so far as railway servants are concerned, it being a fact that the pay structure does not include any compensation for night duty, the ratio of the above industrial cases cannot be applied to them. In *Asbestos Cement Co. Ltd. v. Their Workmen*, reported in Labour Law Journal, Volume I (1954) page 656, a Full Bench of the Labour Appellate Tribunal whilst taking the view that for night shifts by rotation in an industry where continuous production is essential for technical reasons, no Allowance is payable, has given a different reason for its conclusion. It has held that, in a continuous industry, night duty is a condition of service and therefore the Allowance is not payable. The Adjudicator has also given the same reason for rejecting the claim for a higher rate of wage. In my opinion, though the above view is right in so far as it says that performance of night duty is a condition of service, it cannot be made a ground for denial of the Allowance if the pay structure does not include any payment for night duty. The implied condition of service only means that the employee has undertaken the liability to render night duty so that if he is called upon to perform night duty, he has no right to refuse to do so. It does not necessarily follow from this that the employee has foregone his right to demand night allowance if the same is otherwise payable to him or that if the pay structure does not

include any recompense for the same, the employer has a right to refuse to make such payment. In my opinion, to jump to the latter conclusion from the former is to confuse the issue.

Foreign railways and Non-Railway Industries

2.16 The Board resists the claim for grant of the Allowance on the further ground that no such Allowance is granted in a large number of industries in India and in the U.S. railways system and that there is no international labour convention in this respect. Mr. Mahadevan reinforces this argument by pointing out that the Factories Act is silent on this subject. In my opinion, there is no merit in this contention. It will be noticed that except in the instance of Hindustan Steel Works, in the cases of almost all other industries that the Board has cited, either the system of change-over, specially in large factories, or restricted hours of work are in force. The only solitary instance is that of Hindustan Steel Works. There are no materials before me to decide as to why that industry does not pay any Allowance, but, in any case, it is noteworthy that even in that industry, night allowance is being granted to some clerks and messengers in some of their offices. I understand that the Hindustan Steel Works pay bonus to their workers. In any case, the national Labour Commission has recommended grant of the Allowance. In the United States, the Report of the Presidential Rail Road Commission rejected the demand mostly on the ground that a modern wage structure includes recognition of the principle of a premium rate for night work. Though there is no international convention on this subject, the Report of the Inland Transport Committee On The Pay Structure In Rail Transport (1966) takes note of the fact that, in a majority of railways of the world, a special grant for night duty is made.

Claim for Night Duty Allowance for Essentially Intermittent and Excluded Categories

2.17. For the above reasons, I have come to the conclusion that, in a continuous industry where the Allowance is not inbuilt in the pay structure, a night employee does not lose his right to demand grant of the Allowance and that, therefore, all railway employees, irrespective of their classification under the HER, merit a night differential for performance of night duty. In that view of the matter, denial of a night differential to the Essentially Intermittent and Excluded staff cannot be justified.

2.18. I do not agree with the submission of Mr. Mahadevan that night E.I. workers do not suffer more handicaps than what day E.I. workers do, or that the handicaps they suffer are counter-balanced by the handicaps which day E.I. workers suffer from day E.I. workers commence their work either from 6 or 7 or 8 A.M. and end their duties at 6 or 7 or 8 P.M. Mr. Mahadevan's submission is based on two counts. He says that, inasmuch as a day E.I. worker must leave his home sometime prior to the commencement of his duty and reach his place of residence sometime after the termination of his duty, he is bound to suffer the same social, entertainment and recreational disabilities as night E.I. worker does. Secondly, he contends that a great majority of E.I.

workers happen to be posted in rural localities where there are no entertainment or recreational facilities or where social life is not so well-developed as in large cities or towns and that, therefore, on facts, it must be held that E.I. workers in rural localities, even if they are called upon to perform night duty, do not suffer from such disabilities. I have given my careful consideration to these submissions of Mr. Mahadevan. In my opinion, though there is some force in the above submissions, the irksomeness involved in the work performed between midnight and cock-crow stands no comparison to the irksomeness which day E.I. worker has to suffer during the short periods of duty after dusk or duty just before dawn.

2.19. The rotational system prevails on railways in a majority of cases. I understand that, by far and large, the Essentially Intermittent employees are rotational workers and that the number of non-rotational Essentially Intermittent workers is very small. In the Excluded staff, majority of the workers are non-rotational though there are some rotational workers too.

Night Differentials

2.20. The above problem may now be considered in the light of the four night differentials which are recognised by industrial law. As already indicated, both the sides are agreed that the differential of restricted hours of work is impracticable so far as railway industry is concerned. Therefore, if my above view is correct that employees of railway industry merit a night differential for performance of night duty, the differential should necessarily take the form of either night duty allowance, i.e., an extra wage or introduction of the system of rotation or a combination of these two differentials. In that view of the matter, non-rotational E.I. employees have an irresistible case for grant of the Allowance and so also, subject to some more considerations, non-rotational Excluded staff. None of three out of four night differentials being accorded to them, it follows that the residual differential, namely, payment of an extra wage in the shape of the Allowance, should be extended to them.

2.21. The case of rotational railway workers, to whichever classification they may belong to under HER, brings into prominence the question as to whether rotation is a night differential at all for employees in a continuous industry where the pay structure is not inbuilt so as to reflect payment for night duty. Mr. Kulkarni contends that rotation is not a night differential at all, that much less it is so in a continuous industry of the above type and that, in any case, it is not a proper or an adequate form of night differential. Mr. Mahadevan contends that rotation has always been regarded to be a sufficient night differential and that there is no reason why any differentiation should be made in the case of a continuous industry. Industrial adjudicators have expressed two different views on the subject of rotation being a night differential. One view is that it is such a differential and is adequate in itself. The other view is that rotation is insisted upon not because it is an

adequate compensation but because it prevents subjection of the same worker to the rigours of night duty throughout his job career and mollifies it by distributing the burden amongst all co-workers equitably. There is an extreme view which finds favour in *Tata Oil Mill Co.'s* case (supra) which holds that rotation, instead of giving an adequate relief, is a remedy worse than the disease inasmuch as it prevents workers from stabilizing their habits by requiring them to rotate between different shifts. In my opinion, to decide the first Term of Reference, merits or demerits of the above controversy must be considered in the light of the principles which have found favour in industrial law in regard to grant or denial of the Allowance to workers in a continuous industry. As already indicated, the ratio of the industrial decisions depends on two factors : (1) whether the pay structure is or is not inbuilt to pay for night duty, and (2) whether workers in the industry do or do not rotate. In my opinion, it is obvious that the two factors are not designed to play the same role nor are they of equal potency. The first one is the primary factor and, from this, it should follow that where the pay structure is not inbuilt to pay for night duty, the employer must be required in that contingency to pay for night duty. Rotation is insisted upon as one of the factors to be taken into account in the above contingency, not because it represents a night differential but because, if it were not insisted upon, it will amount to hostile discrimination amongst workers, which will offend against the principles of social justice and will lead to disturbance of industrial peace. Thus industrial law determines whether rotation does or does not prevail in a continuous industry where the pay structure is inbuilt to pay for night duty, not because rotation is a night differential but because, if rotation is not granted, the employer will be discriminating between day and night workers. Having regard to the fact that an industrial worker must be taken to have undertaken the responsibility to work in any shift, the industry being continuous, it is quite clear that, if one set of workers were to be called upon to do night duty continuously, then, the other set of workers will not only be permanently exempt from performance of night duty but will also draw a pay which include compensation for performance of such duty in spite of the fact that no such duty is performed. It is quite clear that such continuous employment for one set of workers may lead to disturbance of industrial peace, dis-satisfaction amongst one set of workers and will perpetuate for the latter the handicaps involved in night work. In other words, in my opinion, if rotation were not to be insisted upon in a continuous industry where the pay structure is inbuilt to pay for night duty, the principles of industrial peace and social justice will be offended. Under the circumstances, when one is dealing with the case of a continuous industry where the pay structure is not inbuilt to pay for night duty, the question as to whether rotation is or is not a night differential must be answered on its own merits. If the pay structure is not inbuilt to pay for night duty, it is quite clear that if night duty is demanded from a worker, he must be compensated for performance of such night duty by some night differential. I have already expressed the opinion that the fact that a continuous

industrial worker undertakes responsibility to perform night duty does not necessarily mean that he undertakes to do so without payment of an extra wage. All that he undertakes in such a contingency is that he will not refuse to perform night duty as and when called upon to do so. It follows from this that the understanding is that responsibility to perform night duty will be shared by all workers together. In other words, in a continuous industry, the understanding is that the employer will call upon his employees to perform night duty by turns. Therefore, in a continuous industry where the pay structure is not inbuilt to pay for night duty, rotation cannot be regarded as a night differential inasmuch as, when a worker is rotated, the employer does nothing more than carry out his implicit obligation that he will treat all workers equally and exact from each one of them performance of night duty by turns. Looking at the problem from another aspect, in my opinion, if rotation were to be accepted as sufficient night differential where the pay structure does not contain an element of payment for night duty, then, the employee in a continuous industry will be in a worse position than an employee in the same industry where the pay structure contains such an element. When the latter is the case, the employee gets the benefit of rotation. When the former is the case, the employee will be called upon to accept rotation as a night differential even though his pay structure does not contain an element of payment for performance of night duty. Moreover, where the employer in a continuous industry in which the pay structure is not inbuilt to pay for night duty, rotates his workers, he does not make any contribution towards compensation for performance of night duty. All that he does is that he distributes the rigour of performance of night duty amongst his workers. Having regard to the admitted position that the wage which he gives his workers does not include any compensation for night duty, it follows that, in such a contingency, the employer will get night duty performed by his employees free of any compensation whatsoever. For the above reasons, I have come to the conclusion that, in a continuous industry, where the pay structure does not contain an element of pay for night duty, rotation being implicit in the condition of service, should not be regarded as night differential, much less an adequate or proper night differential. In my opinion, in such an industry, night differential must necessarily take the form of either shorter hours of work or grant of the Allowance. Therefore, in the case of railway employees, the only night differential can be grant of the Allowance.

Actual performance of Night Duty

2.22. From the above discussion, the principle which emerges is that it is the actual performance of night duty which earns the Allowance and not mere liability to do so. Intensive and Continuous workers and members of Workshop staff are being granted the Allowance on the basis of this principle. From the above discussion it is also obvious that EI employees will also get the Allowance only as and when they are booked for night duty. However, having regard to the peculiar conditions of service of the Excluded staff and specially having regard to the fact

that such staff is not governed by HER, except in regard to some matters which are not relevant for the present discussion, the case of the Excluded staff for grant of the Allowance merits a slightly different consideration. I have discussed the peculiar problem relating to this category of railway servants in paragraphs 2.8 and 2.9 whilst dealing with grant of the Allowance on the basis of the ratio enunciated by the Commission. For the reasons I have given in those two paragraphs, I have no doubt that the following members of Excluded staff will earn the Allowance in accordance with the principle which requires actual performance of night duty :

- (1) those members of the supervisory staff who are rostered in night shifts;
- (2) those members of the medical staff who are similarly rostered; and
- (3) members of the confidential staff as and when they are booked for night duty.

The conditions in which these members of the Excluded staff are called upon to perform or are booked for night duty are the same as those in which the members of Intensive, Continuous and EI staff perform such duty. However, the case of (1) C Class Gatemen, (2) Bungalow Peons, (3) Saloon Attendants, (4) Care-takers of Rest Houses, etc., deserves to be separately considered. Whilst considering the demand of the Federation under Term of Reference No. 5, I have decided that the above class of servants should be removed from the list of Excluded classification and should be treated as EIs. Therefore, these railway servants will be entitled to claim the Allowance on the same basis on which it is payable to other EI staff. However, if for some reason such servants are not classified as EIs, it becomes necessary to consider their claim for grant of the Allowance on the basis of their being Excluded servants. The observations made hereafter will be applicable to all other members of the Excluded staff also other than the supervisory, medical and confidential staffs, in regard to whom I have already recorded my decision. In regard to members of the staff other than supervisory, medical and confidential staffs, it is quite clear that, in accordance with the above principle, they can earn the Allowance only if and when they are called upon to perform night duty. Such railway servants can sleep at night without committing any breach of discipline. However, if the exigency so requires, they are required to wake up and perform such duties at night as are expected from them. Therefore, these servants suffer from irksomeness of night duty only as and when they are called upon to perform such duty but, at the same time, having regard to the fact that their hours of duty are not rostered and they are expected to be available for performance of duty not only during day but, also during night, it is quite clear that social, domestic, entertainment and recreational handicaps which these servants suffer from are more than what other night workers have to suffer. The question for consideration is as to whether the sufferance of these other handicaps would entitle the above class of railway servants to grant of the night Allowance and at the prevailing rate. I have

given my careful thought to this problem which appears to be special to the railway system on account of the fact that the above railway servants are not governed by the limitations imposed under HER and, therefore, have to remain available for duty round the clock. Having regard to the fact that these servants can enjoy sleep at night it is obvious that, if they are to be compensated at all, they would have to be done so not for the irksomeness of night duty (specially between mid-night and cock-crow) but for the social and other handicaps. But it is also obvious that these servants suffer from those other handicaps not merely because they have to remain available at night but also because being an Excluded category they have to be available for duty during day. Therefore, if any compensation is to be paid to them for the above handicaps, it cannot be by way of grant of night Allowance but by including it in the structure of their pay. In any case, even if any Allowance is to be paid to them at all, the quantum of the Allowance cannot be the same as the quantum to be granted for the actual performance of night duty. No materials have been placed before me on the basis of which I can evaluate the quantum. Moreover, the extent of the other handicaps which the above class of servants suffer from are not uniform as regards all the sub-categories and differ from post to post and place to place. Under the circumstances, I have come to the conclusion that this other class of servants should be granted the Allowance only if and when they are called upon to perform night duty and that if any adjustment is required to be made for sufferance of other handicaps, it should be done by a revision of their pay structure in case it is found that the pay structure does not compensate them sufficiently for those other handicaps. There is another aspect of the matter also. Having regard to the fact that performance of night duty by the above class of railway servants is either voluntary or occasional, administrative difficulties are likely to arise if the above class of railway servants are granted Night Allowance on the same basis as other railway servants. In that view of the matter, if the administration so wishes it may grant an *ad hoc* consolidated night Allowance, the quantum of which may be fixed after a full study of all the handicaps which each servant in the aforesaid class will suffer from and the Night duty which he will perform, on an average in a month. For the above reasons, the only decision which I propose to record, even as regards these other members of the Excluded staff, is, that they should be granted the Allowance also but for the actual performance of night duty.

2.23. For the above reasons, in my opinion, the demand for the payment of the Allowance to E.I. and Excluded staff and such of the workshop staff as are not comprised within the abovementioned five categories, is justified.

Rate of Night Duty Allowance

2.24. As regards the rate, Mr. Kulkarni puts his case on the analogy of over-time payment. He concedes that over-time allowance and night allowance are not co-related but he says that, in absence of other data, that is the nearest comparison which can

be relied upon. I do not think that any analogy can be drawn from over-time allowance. An over-time allowance is paid for extra duty which an employee performs after performance of his ordinary duty. A night allowance is being paid for ordinary duty which an employee performs but under night conditions. An over-time allowance is essentially penal in nature, being granted primarily with a view to discouraging the employer from exacting work for more than the scheduled hours of work. It is for this reason perhaps that the Factories Act grants over-time allowance at twice the ordinary rate. Mr. Kulkarni also relies upon the rate at which the Allowance is paid in some foreign railway systems. The rate varies in such systems from one-fourth to one-third. I do not think it is safe to rely upon analogies from other systems. Unless one has a full picture of all the benefits which a worker derives in any railway system, it is not possible to rely upon the rate given to him for such allowance divorced from those other benefits. In my opinion, the analogy derived from P & T and Customs Departments also is not helpful. The Commission had the instances of those rates before it. In spite of that, the Commission recommends one-sixth allowance to Central Government servants. That rate has been in vogue since its application to railway servants. All other Central Government servants are also being paid the same rate. The National Labour Commission also recommends payment of the Allowance at the rate of one-sixth. Under the circumstances, in my opinion, the Board is right in contending that no case has been made out for increase of the rate at which the Allowance is being paid at present. In my opinion, this part of the demand deserves to be rejected. In view of my above conclusion, it is not necessary for me to discuss merits or otherwise of the objection of the Board that, if the rate happens to be increased, it will create administrative difficulties inasmuch as, in some cases, subordinates will be getting a higher total pay-packet than their superiors. It is true that this can happen at some levels but the same situation also arises at present at some levels in the matter of either travelling allowance or even the running allowance. In my opinion, the administrative difficulties envisaged by the Board are not insuperable and, in any case, it will not be proper to make this as a ground for denial of a higher rate of the Allowance if the same is justified otherwise.

2.25. In my opinion, the demand of the Federation is justified that the expression "ordinary rate of pay" must include not only dearness allowance but also compensatory and other allowances (except house rent allowance) which are convertible in cash. Such other allowances are taken into consideration for the purpose of calculating the ordinary rate of pay in connection with over-time allowance (*Vide* Chapter VIII headed "Overtime Allowance" paragraph 3, sub-para 2, of the "Compendium of Important Letters Issued By The Government Of India, Ministry Of Railways As A Result Of Commission's Recommendations).

2.26. In my opinion, the gravamen of the Federation is justified that the Board should review the rate of pay for the purpose of calculating the Allowance

with every review of the rates of dearness allowance. The present rate of Allowance is based on the basic pay of an employee and that basic pay includes only the dearness allowance as it was in existence on the date of issue of the orders contained in the letters dated 13-4-1967 and 6-5-1967. Mr. Mahadevan recognizes the force of this demand but says that the position was not reviewed because the demand for such a review was also accompanied by a demand for payment of the Allowance to all employees and an increase in the rate of the Allowance. He says that the Board's view was that the present arrangement was arrived at as a package deal and review could take place only if the whole package deal was revised. Having regard to my above conclusion, I do not see any merit in this contention. Even if my decision in regard to the payment of the Allowance to all employees irrespective of their classification under HER does not come to be accepted, I do not see any merit in the contention of the Board. Having regard to the fact that the ordinary rate of pay includes dearness allowance, it follows that if and when dearness allowance happens to be revised, the revision must reflect the element of pay on the footing of which the ordinary rate of pay is to be arrived at. Therefore, in my opinion, this part of the demand also deserves to be accepted.

2.27. In view of my above conclusions, it is not necessary to make the concession made by Mr. Mahadevan on behalf of the Board regarding the abolition of the upper limit of the basic pay of Rs. 470/- p.m. for payment of the Allowance as part of my decision. However, if my decision is not acceptable to the Government, I feel confident that the Board will implement the above concession.

Summary of Decisions

2.28. For the sake of convenience, I summarise below the decisions which I have arrived at in regard to this Term of Reference :—

- (1) The demand of the Federation that night duty allowance should be granted to all railway employees irrespective of their classification or irrespective of the pay limit which is at present imposed, is granted (*vide* paras 2.5 and 2.23).
- (2) The demand for calculation of night duty allowance at the rate of one and a half times the ordinary normal pay is rejected (*Vide* para 2.24).
- (3) The demand that the "normal rate of pay" should include not only dearness allowance but also compensatory allowance (other than house rent) is also granted (*Vide* para 2.25).
- (4) The demand of the Federation that dearness allowance as revised or reviewed from time to time should be included for calculation of the ordinary rate of pay is granted too (*Vide* para 2.26).

CHAPTER III

TERM OF REFERENCE No. 2—WORKSHOP STAFF

Preliminary

3.1. The three sub-items of the Second Term of Reference are as follows :

“In respect of workshop staff :—

- (a) all vacancies, which occurred since the introduction of the Incentive Scheme should be filled up ;
- (b) proper proportion of skilled, semi-skilled and unskilled staff should be maintained and other measures taken to ensure adequate scope for promotion to the semi-skilled and unskilled staff ;
- (c) the posts of supervisory staff in the mechanical workshops should be redistributed amongst the various grades in conformity with their responsibilities and an adequate channel of promotion should be provided for them.”

3.2. At the time of arguments, Mr. Kulkarni formulated the following points for decision :

1. All vacancies which have occurred in the artisan staff should be filled up ;
2. The ratio of distribution of artisan posts 3:1:1 should be maintained ;
3. An adequate promotional channel should be provided to the unskilled and semi-skilled grades of artisan staff ;
4. The anomaly existing in the case of Mistries who supervise the work of the highly skilled grade I workers in the matter of their scales of pay should be removed ;
5. Mistries who hold independent charge should be upgraded to the category of Chagemen ‘C’ ;
6. Percentage distribution of the various grades of Chagemen should be redistributed ;
7. Percentage distribution of the various grades of Foremen should be redistributed ;
8. Foremen A and B should be granted a special pay of Rs. 150/- and Rs. 100/- per month respectively ;

9. Redistribution of Sub-Supervisory posts should be made available also to staff working in Electrical and S. & T. Communications Workshops ;

10. Further avenues of promotion should be made available to supervisory staff.

3.3. In the course of his arguments, Mr. Kulkarni formulated some more points for decision which were as follows :

1. Recruitment of Trade Apprentices to fill up 50 per cent posts in the skilled grade should be stopped ;
2. Percentage allotted to Mistries and semi-skilled staff for promotion to posts of Chagemen ‘C’ should be increased.

3.4. From evidence it appears that the factories run by railway administrations can be divided into two broad categories. One category consists of units which manufacture rolling stock and/or its spare parts. These units are described in evidence as Production or Manufacturing Units. I am not concerned with these Production Units in this Reference. The other category consists of factories which are described in the evidence as Workshops. The primary function of these Workshops is to repair rolling stock, though both according to the Indian Railway Code for the Mechanical Department (hereinafter called the Mechanical Code) and the evidence, this category also undertakes manufacture of rolling stock and/or its component parts. These Workshops can again be sub-divided into the following sub-categories :

1. Mechanical Workshops ;
2. Electrical Workshops ;
3. Power Houses, and
4. Signal & Tele-communication Workshops.

These sub-categories of Workshops are described in evidence as Workshops, pure and simple. From the sub-items of Reference and the evidence, it is quite clear that I am concerned in the present Reference with these Workshops. From the Statement of

Demands, it appears that the Federation makes some claims in regard to Sheds also. However, at the time of arguments, Mr. Kulkarni concedes that he did not lead any evidence nor place any materials in regard to 'Sheds' and, therefore, he does not press the above points in regard to such Sheds. He concedes that, in regard to Power Houses, he suffers from the same infirmities but he submits that he does not give up his case in regard to such Power Houses and will prefer to press his claim in regard to such sub-category of Workshops.

3.5. From the sub-items of Reference and the points formulated for decision, it also appears that I am primarily concerned in the present Reference with some of the personnel working in Workshops. The persons with whom I am concerned may, broadly speaking, be divided into two categories (1) Artisan staff, and (2) Supervisory staff. The artisan staff consists of workers of the following categories : (1) skilled workers, (2) semi-skilled workers and workers who are known as basic Tradesmen, called BTMs and (3) unskilled workers. The skilled workers are now divided into two sub-categories, highly skilled and skilled, the highly skilled being further sub-divided into grades I and II. The unskilled workers include unskilled supervisors known as Jamadars and/or Mates. From the above description, it is clear that an unskilled worker constitutes the base and a highly skilled worker in grade I constitutes the apex of the artisan staff. The Supervisory staff consists of following sub-categories : Foreman, Chargeman and Mistry. Mistry constitutes the base of the supervisory staff and Foreman the apex thereof. Foreman, in their turn, are divided into two sub-categories designated by the letters A and B and Chargemen are divided into three sub-categories designated by the letters A, B and C. Each of the above sub-categories of artisan staff and sub-supervisory staff has a definite pay-scale assigned to it. However, it is not necessary for the purpose of disposing of the points in dispute to mention the details of those pay-scales.

3.6. From the evidence, it appears that a Workshop consists of a number of shops and the work done in each shop is of a different kind called Trade. Each shop is divided into a number of sections. The organizational set-up of a Workshop is as follows: either a Foreman A or a Foreman B is in overall charge of a shop. In some of those shops where a Foreman A is in charge of a shop he has either one or more Foremen B to assist him. A Chargeman of any of the three categories, A, B and C,

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is in independent charge of a section. A Chargeman ordinarily has one or more Mistries to assist him. The artisan staff works under these Mistries under the overall supervision of a Chargeman. Thus, from the above set-up, it appears that whilst a Foreman is in overall charge of a shop, a Chargeman is in charge of a section of a shop.

3.7. From the sub-items and the points formulated for decision, it appears that I am primarily concerned with (1) the problem of promotion of the artisan staff, (2) some problems peculiar to Mistries, (3) the problem of percentage distribution of the various grades of Chargemen and Foremen, and (4) grant of allowance to Foremen A and B.

Avenues of promotion for artisan staff

3.8. In order to understand and appreciate the problem of promotions of artisan staff, it is necessary to state, at the outset, the avenues of promotion which are available to that staff. An unskilled worker is recruited from the general public. Some Trades are divided into two categories, skilled and semi-skilled. However, there are some Trades which have no such semi-skilled category. An unskilled worker who is appointed in a Trade comprising of a semi-skilled category has the chance of being promoted to the semi-skilled grade provided he passes what are known as Trade Tests. An unskilled worker allotted to a Trade in which there is no semi-skilled category has no such chance. However, in order that an unskilled worker in such a Trade may have chance of being promoted to the skilled grade, the category of BTMs is created. The Board has ordered recently that the posts of Basic Tradesmen should be regarded as trainee posts and that on completion of the training and the passing of the Trade Tests, the incumbents of the posts are eligible for promotion to the skilled grade. Thus, between the skilled grade and the unskilled grade, there are two categories of workers known as semi-skilled workers and Basic Tradesmen. These two categories of workers have the chance of being promoted to the skilled grade provided they pass certain Trade Tests but all the posts in the skilled grade are not available to the semi-skilled workers and Basic Tradesmen. The skilled posts are filled in partly by (1) recruitment and partly by (2) promotion. The persons who are recruited against the skilled grade are known as Trade Apprentices. Before 1959, two-third posts in the skilled grade were filled from the Trade Apprentices and the remaining one-third posts were filled in by promotion from the semi-skilled workers/Basic Tradesmen. Since 1959, however, the proportion

by recruitment to the skilled grade from the Trade Apprentices and by promotion to the same grade from the semi-skilled and Basic Tradesmen has been changed and it is now fifty per cent from each source. However, both the unskilled and the semi-skilled workers have a right to compete with the general public for recruitment as Trade Apprentices with an age relaxation upto three years. Thus an unskilled worker and a semi-skilled worker not only have the chance of being promoted to the skilled grade in the quota of fifty per cent but also have a right to compete for direct recruitment as Trade Apprentices. The skilled posts are now sub-divided into three categories : (1) skilled, (2) highly skilled Grade II and (3) highly skilled Grade I. In 1962, as the result of an Award given by Shri Sankar Saran, the percentage of the above three grades of skilled posts was fixed as six per cent for the highly skilled Grade I, fourteen per cent for the highly skilled Grade II, and eighty per cent for the skilled. Thus, an unskilled worker has the chance of being promoted to the skilled Grade, highly skilled Grade II or highly skilled Grade I. A skilled worker of whatever grade has also the chance of being promoted to the sub-supervisory post of a Mistry. This post is entirely filled up by promotion from the skilled workers. The post of the next sub-supervisor in the hierarchy of supervisors, Chagemen C, is filled up partially (1) by promotion, and partially (2) by direct recruitment. The promotion is from the category of Mistries and Skilled workers and the percentage which is allotted to these persons for promotion is 20 per cent. Thus, 80 per cent of the posts of Chagemen C are filled in by direct recruitment. However, 25 per cent of the source of recruitment, that is, 20 per cent of the whole, is also reserved for skilled workers. These 20 per cent posts are filled in by selection from the existing staff, subject to an age relaxation upto 33 years. This 20 per cent recruitment is not made in competition with the general recruits. It is made by a Special Departmental Board of Selection which selects recruits from out of the existing staff. Therefore, the chances of promotion to the existing staff to the post of Chageman C are as follows: 20 per cent by selection and promotion directly to the working posts and 20 per cent by selection as Apprentices Mechanic to be absorbed as Chagemen C on successful completion of their training. The posts of Chagemen B and A are filled in entirely by promotion from the category of Chagemen C and B respectively. Thus, a Chageman C has the chance of being promoted to the grades of Chagemen B and A. These Chagemen also have the chance of being promoted as Foremen B who, in their turn, have the chance of being promoted as Formen A. Till recently, all the posts of Foremen A and B were filled by promotion entirely from the categories of Chagemen but, I am told, recently direct recruitment to the posts of Foremen is being resorted to on a very modest scale, though there is no evidence before me in this regard.

Broad features of Incentive Scheme

3.9. From the sub-items of Reference and the points for decision, it is also clear that a large number

of grievances of the Federation stem from a Scheme known as Incentive Scheme (hereinafter called the Scheme). Therefore, it is necessary to preface discussion of the points in dispute by mentioning the salient features of the Scheme, its objectives and its implementation. It is also necessary to mention a few orders issued by the Board which have a bearing on the above points in dispute.

3.10. The Scheme was formulated in or about 1959 as the result of an agreement between the Board and the Federation. The essential feature of the Scheme is payment of bonus to workers and/or their supervisor by result. Bonus is paid on the basis of the time saved from the time allowed. The allowed time is calculated by experts known as Rate Fixers. These experts undertake time and motion study of a job. After eliminating the time necessary for preparation to do the job, the Rate Fixers determine the time that an average worker rated at 60 takes to do the job and, on the hypothesis that such a worker, under incentive conditions, will be able to work at 80 rating, the Rate Fixers normalise the time at 80, i.e. 60/80th of what an average worker will require to do the job. This normalised time is taken as a unit of time. To this unit are added some more timings to provide for the following factors, (1) fatigue, (2) contingencies, and (3) time required for testing and gauging the finished product. These timings are added on an *ad hoc* basis. 25 per cent is added for fatigue, 12½ per cent for contingencies and 5 per cent for testing and gauging on machine operations. The Scheme assumes that, normally, an ordinary worker under incentive conditions should be able to earn 33½ per cent by way of bonus. Therefore, the product of the above timings, $1 \times 1.25 \times 1.25 \times 1.05$, is multiplied by 1.33. The result is 1.97. This is the total time which is allowed under Scheme to a worker to do a job at which he will earn no bonus. But the worker will begin to earn bonus if he is able to save any time from the allowed time of 1.97 and bonus is calculated on the basis of the time which is saved by the worker in doing the job. From the above formula, it is clear that, if a worker is able to save time to the extent of 33½ per cent which is allotted to him by way of bonus, that is, if he is able to accomplish the job, in 1.43 timings, he will be earning the bonus of 33½ per cent. However, there is an upper limit which is fixed beyond which no bonus can be earned by a worker, that is, the maximum bonus which a worker can earn is fixed at 50 per cent. Therefore, under the above formula, the maximum time which is allowed to a worker to do a job at which he can earn the maximum bonus is 1.32. This upper limit has been set to prevent a worker from overstraining or exhausting himself. The total time saved by him from the allowed time and the total time lost by him over the allowed time over a whole month are calculated together and the excess of the time saved in a whole month is the basis for calculating bonus payable to a worker during that month. The time saved or lost in a particular month is not taken into account whilst calculating bonus for the next month. According to the Deputy Director, the object of the Scheme was to

increase the productivity of the workers to enable them to handle additional load which was envisaged by the implementation of the Third and the Fourth Development Plans. The Press Note dated 26-10-1959 issued by the Board after the Scheme was agreed to between it and the Federation, stated that the Board and the Federation had agreed (1) that no worker would be retrenched as a result of the working of the Scheme, (2) that an equitable share of gains resulting from higher production would be received by the workers as incentive bonus, and (3) that care would be taken to see that the workers do not over-strain themselves in order to get increased earnings. The Deputy Director defined productivity as the ratio of in-put to out-put, that is, with the same labour force, the labour should be able to put in more out-put. According to the Deputy Director, the Scheme was brought into existence not only to cope with the immediate requirements but also to meet the Plan requirements; it was, however, necessary to bring the Scheme into existence immediately so that the Board might not be caught unawares and that the Board might be able to cope with the increased workload as and when it arose. According to the above witness, one of the objectives of the Scheme was to differentiate between a direct worker and an indirect worker, a direct worker being the primary worker and the indirect being his assistant. According to him, the skilled workers are the direct workers and the semi-skilled and the unskilled workers are the indirect workers. He says that, when the job of a direct worker was evaluated, it was found that there was a surplusage of his assistants. The Scheme was not implemented at one stroke in all the Workshops, nor was it introduced in a Workshop simultaneously. Having regard to the fact that the Scheme envisaged increased productivity by a worker to the extent of 33½ per cent, it was likely to create surplusage at least to that extent wherever it was introduced. Therefore, according to the Deputy Director, the Scheme was phased out and introduced section-wise in a Workshop. According to him, if the implementation of the Scheme was likely to result in a surplusage of direct workers, then, the pre-requisite for the introduction of the Scheme was the provision for additional workload in that section. Thus, before introducing the Scheme, new lines of work, such as wagon production, crane manufacture and manufacture of components, etc., were undertaken for the section and in order that continuity of the additional workload might be maintained, it was further necessary to see that the section concerned was supplied with sufficient raw materials and tools. According to the Deputy Director, they also anticipated increase in the conventional workload

on account of the estimated increase in the rolling stock and the consequent increase in periodic overhauls, which is the primary function of a Workshop. The Deputy Director says that they anticipated surplus in a section only if the bonus earned was more than 33½ per cent. He further says that if, in spite of the above effort there was any surplus in any section, then, steps were taken to absorb the surplus workers somewhere else in the shop or the workshop. He further states that additional lines were opened as a temporary measure only to tide over the difficulty which might arise on account of insufficient work, their ultimate object being to shed off the new lines of work if the conventional workload of a workshop became sufficient. He says that, as a result of the above policy, they shed off additional lines as soon as conventional workload became sufficient for the additional output, but that, when doing so, adjustments were made in the conventional workload because of (1) dieselisation, (2) electrification, and (3) introduction of metal-bodied coaches, welded type wagons, box-type wagons, covered and open four-wheelers and tank wagons. According to the Deputy Director, after the introduction of the Scheme, incentive cadres were fixed for each of the Workshops. This was done by estimating the workload of a section and then estimating the workers required to fulfil the workload by taking into consideration the type of the trade prevailing in the section. This was done on the basis of the number of manhours required to fulfil the workload. According to him, though the cadre strengths were sanctioned, no staff was appointed on the ground that the estimates on which they were based might go wrong because of (1) change in the workload, or (2) change in the pattern of work. However, he maintains that when surplusage of skilled workers was found in relation to the sanctioned cadre strength, the railway administration did not reduce the actual number of skilled workers but endeavoured to provide new lines of work. The incentive cadres were revised by railway administrations only after the Scheme was worked out as regards a whole Workshop. However, if any change was to be made in the incentive cadre, the same was to be brought to the notice of the Board who sent the proposal back for re-consideration if the change (1) did not conform to the general pattern of productivity targets, (2) the pattern prevailing in other workshops, and (3) did not consider local conditions. According to the Deputy Director, thereon a correspondence would ensue between the railway administration and the workshop concerned and the incentive cadre would be revised after the points raised by the Board had been fully considered.

3.11. In 1958, the Board issued an order banning further recruitment of unskilled workers.

3.12. In 1959, the ratio of direct promotion of semi-skilled workers and BTMs. to skilled grade was increased from 1/3 to 1/2.

Formula of man-power ratio

3.13. In June 1960, the Board issued an order fixing what has come to be known as the man-power ratio. According to the Deputy Director, this ratio was arrived at by dividing the actuals of staff by the total out-turn of the rolling stock repaired in terms to a standard unit. The man-power ratio, according of the Deputy Director, means that the number of men required for a particular type of work are represented by the number of men required per unit of repair per annum. The manpower ratio for coaches, broad gauge, was fixed at 1.1 men; for coaches, meter gauge, .9 man; for wagons, broad gauge, .25 man, and for wagons, meter gauge, .2 man. As for locos, both broad gauge and meter gauge, the order issued in June, 1960 mentioned the man-power ratio as 14 men but the order issued in August, 1960 changed the ratio to 11 men. The above ratios were repeated by the Board in another order which was issued in 1963.

3.14. In 1960, the Board issued an order by which it fixed the ratio for skilled, semi-skilled and unskilled workers at 3 : 1 : 1. According to the Deputy Director, this ratio was based on the strength of the skilled workers. This is so because, according to him, a skilled worker is the direct worker and the semi-skilled and the unskilled workers are his assistants. The evidence discloses that no ratio was fixed for the three categories of artisan workers prior to this. The Board contends that, prior to the Scheme, the unskilled worker predominated over the skilled worker. According to the Deputy Director, when they evaluated the jobs of direct workers for the purposes of the Scheme, they found that there was surplussage of their assistants.

3.15. In 1965, the Board issued an order in which it directed that BTM posts should be regarded as trainee posts and that, all BTMs who had passed Trade Tests, should be promoted to the skilled grade and that if any BTMs could not be so absorbed, the surplus should be assigned to supernumerary posts of BTMs which were to be specially created.

Non-filling of artisans' vacancies

3.16. That brings me to the vital question of vacancies arising as a result of implementation of the Scheme. From the facts narrated above, there is no doubt that vacancies would be expected to arise in the unskilled grade as a result of the ban on the recruitment of unskilled workers. The Federation cannot make any grievance of the latter order. It is for the management to consider whether any

recruitment should be made to a particular cadre or not. That is a matter of policy for the management. In the present case, the Board has given a good reason as to why the ban was promulgated. Having regard to the fact that a Scheme was likely to come into existence, it was not imprudent on the part of the Board to take this preventive measure so that no complications could arise in implementation of the Scheme. One of the objectives of any incentive scheme would be to increase the productivity of the worker and it is quite clear that, if and when the scheme came into operation and the efficiency of the worker increased, the out-turn would rise and the workload remaining the same, the cadre requirements would diminish. There is reason to believe that before implementation of the Scheme, the strength of unskilled labour predominated over that of the skilled labour. This is reinforced by the evidence of the Deputy Director who deposes that, when the job of direct worker was evaluated, it was found that his assistants were in excess of the required numbers. The main work done in every workshop is by skilled labour. The cadre requirements of the workshop, therefore, depend upon the work which is available for skilled workers. No exception has been taken by the Federation to the stand of the Board that the ratio of unskilled labour must be made dependent upon the strength of skilled labour. Therefore, apart from the fact that the Federation is not directly concerned with the question of recruitment of unskilled labour, which is entirely a matter of policy for the Board, no exception can be taken to the aforesaid order of the Board on the above consideration too. Therefore, at this preliminary stage, it is not necessary to consider what vacancies arose in the cadre of unskilled labour. The ban was lifted in regard to some workshops in the latter part of 1969 and, in respect of some others, in the beginning of 1970. Some workshops have already begun to act on the recession of the ban and the others are in the process of doing the same. But the main complaint of the Federation arises out of the fact that, because of the above ban, not only recruitment of unskilled labour was stopped but promotions of unskilled, semi-skilled and skilled labour were either arrested or retarded. It is the latter complaint which is of primary importance in the present Reference. There is overwhelming evidence in the case to show that, as a result of the above ban, promotions in the above three cadres were either arrested or retarded. Several witnesses of the Federation depose to this fact and there is no cross-examination on the subject. There is also evidence to the effect that further promotions were barred on the ground that the promotions were not to be made until the productivity targets were achieved. Witness Deshmukh of Parel, Western Railway Carriage & Wagon Repair Workshop, deposes that the problem of vacancies was agitated at a meeting convened under the PNM Scheme at the Railway level and that, at that time, the workers were told that the vacancies would not be filled up till productivity targets were achieved and until incentive cadres were finalised. The Board has furnished a statement showing the vacancies which existed in the semi-skilled and skilled grades in the years beginning from 1958 to 1969. It is not possible to have any idea from this statement

about the true vacancies arising from year to year because the vacancies have been mentioned not with reference to the sanctioned strength in 1958 but with reference to the sanctioned strength of each year. Some sub-statements have been compiled by both the sides from out of the above main statement of vacancies. One of the sub-statements furnishes figures in respect of the above two years showing the difference between the actual strength of highly skilled and skilled workmen in the above two years. According to this sub-statement, the actuals in 1969 in the category of skilled workers were more by 2231 than what they were in 1958. From another sub-statement, it appears that the actual strength of semi-skilled staff dwindled from 1958 to 1969 by 3506. The contention of the Board from these figures is that, therefore, there has been no depletion of strength in the skilled grade and that the depletion in strength of semi-skilled workers is only marginal. From the above statement and the sub-statements, the all-India picture of the skilled strength is not only not disconcerting but is even roseate and that of semi-skilled labour also cannot be stated to be unsatisfactory. Viewed in the light of the ratio of 3:1:1 also, the position does not appear to be unsatisfactory. According to the Deputy Director, the ratio as obtaining on 31-3-69 was 3 : .8 : 1.01. Mr. Kulkarni, in one of the sub-statements, has given the ratio as between skilled workers and semi-skilled workers, the figures of which have been culled out by him from the above main statement furnished by the Board. According to that sub-statement, the ratio of the semi-skilled workers is not .8 but .7. Probably, the difference arises on account of the different dates chosen for the compilation of the figures by the Federation for the above sub-statement and the figures compiled by the Board. In view of the above state of affairs, Mr. Kulkarni very rightly did not press for a detailed consideration of the retardation of promotions from the year in which the ban was imposed or from the years in which the Scheme was introduced in various workshops. There is no doubt whatsoever that the cadre strength of each of the workshops was bound to be revised as a result of the Scheme. No exception is taken to the principles on which the incentive cadre strengths were built up for the various workshops. In fact, one of the witnesses of the Federation itself has admitted that a cadre strength is primarily based on the content of work in terms of man-hours and an addition of 12½ per cent thereto by way of leave reserve. I have already mentioned in an earlier part of this Report the principles which determine the formation of cadre strength as given by the Deputy Director. The latter has mentioned that those incentive cadre strengths were revised after implementation of the Scheme. He has also indicated the principle on which the cadre strengths were revised from time to time. There is no evidence nor any materials before me on the basis of which I can say that the cadre strengths which have been determined are not in conformity with the principles deposed to by the Deputy Director. But, the main argument of Mr. Kulkarni is based on the fact that the actual strength of highly skilled and skilled workmen in 14 out of 32 shops has got reduced between 1958 and 1969. To take a few examples, the actual strength

has reduced by 983 in the case of Parel Workshop; by 614 in the case of Kancharapara Loco Workshop; by 531 in the Ajmer Loco Workshop; by 221 in the case of Lower Parel and by 325 in the case of Ajmer Carriage & Wagon Workshop. He, therefore, contends that, whatever may be the reasons which may have led to the increase in actual strength of highly skilled workers in 17 out of other 18 shops, the fact that actual strength decreased in regard to the above 14 shops demands serious consideration. In view of the above contention, I have thought it proper to consider the oral evidence adduced before me in regard to the vacancies existing in the various workshops from which the witnesses of the Federation hailed. Witness Philips deposes that there are 600 vacancies of artisans in the Carriage & Wagon Repair Workshop at Ajmer, 200 being in the incentive section and 400 in the non-incentive section; witness Rao of Central Railway Workshop at Parel and witness Deshmukh of Western Railway, Parel Workshop depose about vacancies not being filled up in their workshops though they do not give the actual number of vacancies. Witness Govindrajan of the Perambur Carriage & Wagon Workshop deposes about the existence of 480 vacancies in the unskilled category and 344 vacancies in the semi-skilled category as on 20th February, 1970. Witness Misra of Loco Workshop, Charbaug, speaks of about 56 vacancies in the unskilled grade in the sanctioned strength of 704. Witness A.K. Ghosh of Liluah, J. Shop, deposes that there are 111 vacancies in the skilled grade in the incentive section on 1-3-70 and 121 vacancies in the semi-skilled grade in the same section on the same date. He also speaks of 150 vacancies in the unskilled grade. Witness Misra of the Loco Workshop, Charbaug, deposes that there are vacancies in the unskilled grade though he admits that the vacancies in the Machine Shop have been allowed to be filled up by engaging substitutes since 1970 and since October, 1969 in other shops. All the vacancies in the above cases are based upon the incentive cadre strength. As against the above evidence, witness Rao of Perambur Carriage & Wagon Workshop admits that almost all workers in the semi-skilled grade at the time of the introduction of the Scheme with very few exceptions have now been promoted to the skilled grade. Witness Misra of Loco Workshop, Charbaug, also admits that since 1958, the skilled and semi-skilled workers were promoted in his workshop, though he cannot state as to how many such promotions were made. Therefore, the conclusion to which I have arrived at is that, whilst promotions were arrested or retarded as a result of the ban, it is a fact that, after the fixation of the incentive cadres there have been very few vacancies in the skilled strength which have remained unfilled on an all-India basis but that, in some workshops, vacancies still remain to be filled up even on the basis of the incentive cadre strength.

3.17. The details of vacancies, the sub-statement in regard to which has been furnished by Mr. Kulkarni based upon the main statement submitted by the Board, shows that in skilled and semi-skilled grades also the total number of vacancies is 7252. This is stated to be about 10 per cent of the total cadre strength. The explanation of Mr. Mahadevan is

that this is not a serious matter at all and that, throughout the administrative gamuts of the workshops there have always been vacancies. In support of this contention, Mr. Mahadevan has supplied another list of vacancies as they stood on 31st March, 1958. The total number of vacancies is shown to be 4832 therein. I do not think the explanation can be regarded as satisfactory. In the first instance, it is to be borne in mind that, in the years before the introduction of the Scheme, no productivity targets were fixed, no staff ratio was provided for and that the cadres were fixed on an *ad-hoc* basis. The incentive cadres, on the other hand, have been fixed on a more scientific basis after the fixation of the man-power ratio and the ratio between the different categories of staff. The work in the railway workshops has also increased considerably as is shown by the figures already mentioned. In the meantime, the total number of workers has declined. Whereas in the year 1958 the total number of workers in the workshops was 1,16,000, in 1963-64 it had dropped to 99,900 and in 1968-69 it was 1,04,000. The Scheme was introduced after careful preparations and precautions were taken to provide additional load of work in case there was a surplusage of staff in workshops. The policy was not to shed off additional load of work until the conventional load was sufficient to provide work for the employees. In view of these changed circumstances, in my opinion, if there is a discrepancy of the kind as is to be found in the statistics placed before me between the sanctioned strength and the actuals, the matter cannot be regarded as unimportant. On the contrary, it is indicative of the presence of some malaise somewhere.

3.18. Now, based on the above picture, the argument of Mr. Kulkarni is that the picture represents a breach of the basic understanding in the matter of the agreement to introduce the Scheme. The argument is that the increased productivity of the individual worker was not the sole aim of the Scheme. Mr. Kulkarni contends that, the main objective of the Scheme was as mentioned in Paragraph 32 at Page 36 of "A Review of The Performance Of The Indian Government Railways for 1969", "that the increase in the capacity of the railway mechanical workshops to cater for the increasing numbers of rolling stock should be achieved as far as possible through an improvement in the productivity of man-power ratio rather than an increase in the staff and equipment." He says that the same objective is to be found repeated in the same publications for the years 1968 and 1970. Therefore, according to Mr. Kulkarni, the main objective of the Scheme was to cope with the additional load which was expected as a result of the anticipated implementation of the Development Plans by increasing the productivity of the workers rather than by a fresh investment in men and machines. Mr. Mahadevan does not take an exception to this statement of the objective of the Scheme but his argument is that no guarantees were given that promotions would not be affected by implementation of the Scheme. On the other hand, Mr. Kulkarni contends that, such a guarantee is implicit in the above objective of the Scheme itself. In my opinion, Mr. Mahadevan is right in his contention that no such guarantee was given under the agreement.

The principles which the parties agreed to have been mentioned in the Press Note dated 26th October, 1959. The Press Note only speaks of a provision against retrenchment. Having regard to the fact that the Scheme was devised also to increase the productivity of the workers, it is crystal clear that vacancies in the cadre strength should and could have been anticipated. That no such guarantee against promotion was given is also implied in the fact that the Federation raised that question for the first time in its resolution dated 15th Nov. 1959 in which it urged the Board to see that prospects of future promotions were not adversely affected, to which the Board did not give any reply. I doubt as to what attitude the Board would have adopted if any such guarantee had been called for. It is probable that, in that contingency, the Board would have re-examined the situation in the light of financial implications involved. If the Board were called upon to retain the same cadre strength even after increase in the out-turn of work and payment of bonus, probably, the whole Scheme might have been a financial failure. Under the circumstances, I am not inclined to agree with the contention of Mr. Kulkarni that any such implied guarantee against the arrest or retardation of promotions was given to the workmen. But even assuming that, on the basis that the main objective was to cope with the additional workload, it follows that the cadre strength was to remain constant, that the increased productivity was to cope with the increased workload, the cadre strength remaining the same, the conclusion that an adverse effect on the promotions was guaranteed could be justified only if it can be held that, prior to the introduction of the Scheme, there was any such guarantee implied in the arrangement then existing between management and workmen. As I have already pointed out, a workman has no right to be promoted to a higher cadre. Under para 202 of the Mechanical Code, the number of staff normally required for each workshop has to be fixed "with reference to the minimum requirement of the workshop and a temporary addition made to it for a limited period only as and when it becomes necessary to do so." Under paragraph 205 of the same Code, the power to distribute staff under each trade category within the limits prescribed above is vested in the Works Manager. Therefore, in my opinion, the contention of Mr. Mahadevan is correct that even in normal times, cadres in a workshop could and did vary and that the variation might be due to a number of causes such as availability or non-availability of raw materials and tools. Under the circumstances, even on the assumption that the objective of the Scheme was as contended for by Mr. Kulkarni, I am not convinced that the Board had abrogated its right of determining the cadre strength on the principles enunciated by the Deputy Director and accepted by one of the witnesses of the Federation. In that view of the matter, in my opinion, no exception can be taken to the fact that, as a result of the ban or the introduction of the Scheme, the vacancies remained unfilled and promotions to the higher grades were arrested or retarded.

3.19. For the above reasons, in my opinion, no objection can be entertained on the ground that incentive cadres have reduced the cadre strength of

the various categories of artisan staff as they existed at about the time when the Scheme was introduced in each of the workshops. However, the figures furnished by the Board and the vacancies deposed to by the witnesses whose evidence I have summarised above do bring into prominence one important factor which, in my opinion, deserves careful consideration and thought. That factor is that, a number of vacancies remained unfilled even after the incentive cadres were settled. In my opinion, this has arisen because the incentive cadres do not make a distinction, as required by paragraph 202 of the Mechanical Code, between the minimum requirements of a workshop and temporary additions made thereto. Mr. Mahadevan was unable to enlighten me as to whether the sanctioned strength mentioned in his main statement of vacancies represents the minimum requirements or is a combination of both the minimum requirements and temporary additions. In my opinion, if the principles deposed to by the Deputy Director were properly applied at the time of the formation of the incentive cadres, there is no likelihood of occurrence of considerable variations between the minimum cadre strengths and the actual number of workers on a long term basis. The fixation of a cadre strength is designed to provide fixity to labour and such fixity is bound to create expectations in the mind of labour which it would be imprudent for any management to let remain unrealized for long. Some causes which were suggested by Mr. Mahadevan for such considerable variations were that the estimates of workload had gone away or that the change of pattern of trades had led to the depletion of the posts. On the materials on the record, none of the above causes *prima facie* appeal to me. As deposed to by the Deputy Director, there has been a considerable increase in the rolling stock on the railways. Locomotives, coaches and wagons have increased from 8,000, 19,500 and 2,05,000 respectively in 1950-51 to 11,400, 34,200 and 3,82,000 respectively in 1968-69 and that the anticipation was that there would be 14 per cent increase in broad gauge locomotives and 9 per cent increase in meter gauge locomotives and 16 per cent increase in coaches at the end of the Fourth Plan and 17 per cent increase in wagons at the end of the same Plan and 25 per cent increase at the end of the Fifth Plan. Even taking the holdings of 1957-58 and 1968-69 for comparison, it appears that the increase in the rolling stock is phenomenal. During this period, the steam locomotives increased from 9,801 to 10,046, diesel locomotives increased from 96 to 996, electric locomotives increased from 89 to 513, EMUs increased from 699 to 1,562, coaches increased from 24,104 to 32,729 and wagons increased from 2,89,458 to 3,81,859. The Deputy Director admits that though the quantum of rolling stock has increased, the period fixed for Periodical Overhauls has not changed and that the period fixed for Intermediate Overhauls has also not changed. During the above period, new types of coaches and wagons have also been introduced. Wooden-bodied coaches have been replaced by Integral Coaches. Box Type Wagons, Diesel and Electrical Engines have been introduced. The Deputy Director further admits that though all these new types require more man-hours and more skilled labour for periodic overhauls, the schedule fixed for their periodic overhauls in the workshops has remained the same. Under the circumstances,

I have come to the conclusion that either there is some laxity in the matter of the fixation of incentive cadres or that the workshops in which there has been considerable number of vacancies have either been underfed or additional lines of work have not been provided to them or after having been so provided have been off-loaded prematurely without due regard to the promotional prospects and welfare of the artisan staff. In any case, the matter requires re-consideration. In my opinion, therefore, a directive requires to be issued to the workshops to re-fix the incentive cadres in the light of the principles enunciated by the Deputy Director and in the light of the provision contained in paragraph 202 of the Mechanical Code. The incentive cadres must be fixed with due regard to the minimum requirements of each workshop and provision must be made for temporary additional posts which may be filled up at the discretion of the Works Manager. Such a step will also prevent a capricious and arbitrary use of the power to fill up vacancies as and when they occur and will also be a good security against some of the other factors which I propose to mention hereafter which appear to me to have vitiated the system in the matter of granting promotions to workmen. Attempt must be made, as far as possible, to fill up vacancies in the permanent incentive cadre, unless, in the opinion of the Works Manager, the filling up of such vacancies is not immediately justified, but, in such a contingency the Works Manager must be directed to give up the excessive posts if the same are not required to be filled up within a certain period of time, say, about six months. However, if any change is to be made in the permanent cadre strength it must be made on the principles enunciated by the Deputy Director as regards the non-filling up of vacancies which I have mentioned above. In making such variations, emphasis should be more on the consideration of local conditions prevailing in the workshop rather than, as I shall presently show, its effect on productivity targets. The Works Manager should not be deterred from filling up temporary additional posts as and when required as provided in the Mechanical Code.

3.20. There is also evidence to the effect that even after the sanction of incentive cadres, the ratio between the different categories of workers has not been maintained in some workshops. Witness Govindarajan of Perambur Workshop states that there is a short-fall of about 6 per cent in the ratio of unskilled workers in his workshop. Witness Hussainey of the same workshop says that the proportion of unskilled workers to total workmen is 17 per cent and that in his unit, it is 15 per cent only as against the ratio of 20 per cent meant for the unskilled workers. Witness Kuldev Raj of Chargaug, Lucknow, states that the actual ratio of the different categories of workers in his workshop is 2:1:1. The specific evidence led by the Federation about the existence of vacancies in various workshops and the non-maintenance of the ratio of 3:1:1 in certain workshops and the total absence of any rebuttal evidence by the Board impels me to examine the causes which have led to the occurrence of vacancies and the failure to fill them up, so that the validity or otherwise of those reasons may be ascertained and proper directions given for future guidance.

3.21. At this stage I propose to dispose of two more points which witness Philips says were the result of the ban on recruitment of unskilled labour. Philips states that many skilled workers were rendered surplus and that surplus workers were absorbed elsewhere in the workshops. I do not think any importance can be attached to this consequence. As a result of the introduction of the Scheme, such a consequence was inevitable. Moreover, I am satisfied that the workshop administrations acted on correct principles in this matter and took the correct steps to reduce surplusages as far as they could. As already indicated, the evidence of the Board is that, before implementation of the Scheme, if it was estimated that surplusage would arise, additional lines of work were to be provided to the section concerned and even if after doing so a surplusage did occur, the only way in which the administration could tide over the difficulty was to absorb the existing staff in some other shops. It is true that, by taking the aforesaid two steps, the promotional prospects of the shop in which surplusage arose and in the shop or shops in which surplusage was absorbed must have been affected but, in my opinion, this is an inevitable result of the Scheme to which no exception can be taken. The second grievance mentioned by Philips is that, as a result of implementation of the Scheme, posts in skilled and semi-skilled grades got reduced. In my opinion, this is also one of the inevitable results of the introduction of the Scheme and must have been anticipated. Moreover, I am convinced that the number of posts in the above two grades came to be determined on correct principles. I have already summarised the evidence of the Deputy Director as to the principles on which they acted before the fixation of the incentive cadre. I have also reason to believe that steps were taken by the railway administrations to mollify the above results as far as they could. The evidence of the Deputy Director is that about 81 per cent of the total number appointed to the skilled grade are from semi-skilled/BTMs during the years 1962 to 1969 and that only 19 per cent of vacancies in that grade was filled up from the category of Trade Apprentices. Only such of the Trade Apprentices were absorbed in the skilled grade as had passed proper tests and were eligible for absorption. Having regard to the fact that the proportion of promotions from the semi-skilled/BTMs and the absorption of Trade Apprentices was fixed at 50:50, it is quite clear from the above percentages that semi-skilled and BTMs benefited to the extent of 31 per cent in the matter of promotions. There is also evidence to the effect that no Trade Apprentices were recruited after 1958. In fact, recruitment from this source has been recently banned.

3.22. There is overwhelming evidence that unskilled workers were not promoted though there were vacancies in higher grades on the ground that, because of the ban on recruitment of unskilled workers, their minimum strength in the workshop would be reduced. In my opinion, this result was unfortunate. However, having regard to the fact that the ban has already been lifted, it would be idle to consider this ground any further. The same reasoning applies to the ground that promotions to the higher grades were barred on the ground that the number of unskilled workers left

over for promotion would be such that the unskilled work in the section would suffer. However, the evidence discloses that such a ground was not of universal application. There is evidence to show that, in some workshops, the unskilled workers were promoted to the higher grade either by engaging unskilled workers from non-incentive shops or by engaging substitutes from casual labour. The latter method of appointment was not strictly in conformity with the departmental orders on the subject but I am not concerned with that aspect of the matter. The fact is that the administrations concerned did take steps for the purpose of promoting unskilled workers even though the consequent vacancies came to be filled up in breach of the departmental orders.

3.23. However, one of the grounds on which the moratorium on promotions took place was that the productivity targets would otherwise suffer. I cannot blame the administrations if, at the initial stages of implementation of the Scheme, they kept this aspect in view in regulating promotions. However, one of the complaints of the witnesses on this score is that productivity targets were incapable of being reached in some workshops for very good reasons. That raises the question as to how the productivity targets were fixed. The Deputy Director deposes that these productivity targets were not based on a time and motion study of the jobs in the workshops, as that was a time-consuming process. According to him, productivity targets were fixed on the basis of the experience that a large number of workshops were able to attain them. On the other hand, the Federation maintains that productivity targets were based on the increased activity expected as a result of the Scheme. The Deputy Director maintains that this was not so. The Federation contends that productivity targets were revised in the case of locos only a few months after they were fixed in June 1960 and that targets in respect of all the types of rolling stock were again repeated in 1963 and that it is incredible that, having regard to the fact that the Scheme had been substantially introduced by that time amongst a large number of workshops, the Board could not have taken into account the increased productivity which the Scheme was likely to bring. There is some force in the contention of the Federation but I do not think it necessary to pursue the matter any further for the following reasons. The witnesses of the Federation point out that achievements of the productivity targets depend upon a large number of factors, such as (1) the state of the plant and machinery, (2) lay-out of factory, (3) availability of machines and tools, (4) availability of raw materials, and (5) raw material handling and raw material movement facilities. Some of the witnesses, especially from Perambur and Bombay, point out that their workshops were more than half a century old and that difficulties were encountered by them in working in those workshops on account of the over-aged plant and machinery, the unsatisfactory lay-out of the factory and out-moded material handling and material movement facilities. In fact, the witness from Parel Workshop complains that work had to be stopped in his workshop every year because of the flooding of the workshop premises on account of heavy rains and because of the existence of a

traverser crane between the Carriage Repair and the Paint Shops. However, though there is considerable force in the above reasoning, the fact is that the above workshops have been able to achieve the productivity targets. There is no evidence before me to show that those targets were achieved by exploitation of labour, *i.e.* by over-straining them. The main argument of Mr. Kulkarni is that the targets inherent in the Scheme were excessive and that the minimum of 33½ per cent improvement expected of the worker in the Scheme was itself the maximum and that anything in excess of 33½ per cent of output could only be the result of overstraining and that, therefore, any bonus earned in excess of 33½ per cent should be discouraged and productivity targets revised on that basis. I am unable to agree with the aforesaid reasoning of Mr. Kulkarni. It is true that, normalised time under the Scheme is reached by raising the output of a 60-rated worker to 80. However, there is no evidence before me to show that such normalised time was in excess of what an ordinary worker would take to perform his job. In the absence of any such evidence, I am not prepared to proceed on the basis that, under the Scheme, a worker would find difficulty in producing one-third more than what he used to do before. There is some force in Mr. Mahadevan's argument that there was considerable scope for increasing the efficiency of the Indian worker, especially when that efficiency is compared with that prevailing in some other countries even after some allowances are made for the different conditions under which the Indian worker has to perform his job. Therefore, I cannot agree with the proposition that 33½ per cent increase in the output could be achieved only by straining the worker to the maximum, nor can it be held that anything in excess of 33½ per cent could be achieved only at the cost of the worker's health. Before arriving at the allowed time, allowance was made for unproductive or ineffective time. Measures can be taken by the administration itself for the purpose of reducing ineffective or unproductive time and, to that extent, the worker can benefit. Moreover, the allowed time is arrived at by giving credit for contingencies at the rate of 12½ per cent. This allowance is made to provide for the personal needs of the worker and such other matters. Time can be saved by the worker on this account also. Moreover, the fatigue time which has been allowed is also liberal enough. Under the circumstances, in my opinion, if the worker earns bonus more than 33½ per cent or even the maximum of 50 per cent, it cannot be stated that the worker achieves this by over-straining himself and at the cost of his health and efficiency. Moreover, if the above contentions were true, I would have expected the Federation to adduce evidence on the subject. In view of total absence of such evidence, I am not prepared to hold that the Scheme, which has now been worked for more than five or six years, is such that productivity targets fixed by the Board could be achieved only by exploiting the labour. This is further proved by the fact that the manpower ratio has decreased from year to year. The general ratio has gone down from 11 in regard to locomotives (B.G.) to 9.6 and from 1.1 to .96 in regard to coaches (B.G.) and from .25 to .22 in regard to wagons (B.G.). In fact, productivity target achieved by some of the workshops is pheno-

menal. The Dohad Loco Workshop has reduced the ratio to 6.8 for broad gauge locomotives, the Jagadhri Carriage & Wagon Workshop has reduced it to .64 in regard to Broad Gauge coaches and the same workshop has reduced it to .15 in regard to Broad Gauge wagons. However, whilst I am not convinced that productivity targets fixed by the Board are unfair, in my opinion, in not filling up the vacancies in a particular workshop on the ground that the manpower ratio would be affected, it is necessary to bear certain other factors in mind. In the first instance, the administration concerned must bear in mind the fact that productivity target is not a target necessarily fixed for its workshop alone to be achieved. It is an All-India manpower ratio which the Board expects to be achieved for all the workshops put together. Therefore, in my opinion, in filling up vacancies the workshop administration should not make a fetish of the manpower ratio. That ratio must be applied having regard to the local conditions prevailing and bearing also in mind the promotional prospects of workmen. Some workshops are more than half a century old and they have not been remodelled for a considerable length of time. I had occasion to see a few of them and I must confess that the experience which I had was hardly complimentary in regard to the conditions in which those workshops were existing. The plant and machinery in some of these workshops is overaged if not worthy of condemnation. The lay-outs of these factories are not satisfactory. Under the circumstances, after the incentive cadres have been fixed, in my opinion, it would not be proper to arrest or retard a promotion due to a worker solely on the ground that the all-India manpower ratio would be affected. Having regard to the fact that the manpower ratio has been considerably reduced on an all-India basis, in my opinion, the administrations can, with justification, tolerate marginal variations in regard to individual workshops. I have come to this conclusion because the evidence before me does disclose that, during the interregnum, the workers of some workshops, though they have benefited in the shape of bonus, have suffered in the matter of promotions. I have no doubt whatsoever that this was not at all due to any lack of sympathy or over-enthusiasm or promiscuity in implementation of the Scheme. I am convinced from the evidence of the Deputy Director that the workshop administrations have taken proper steps to mollify the shocks inherent in the working of the Scheme but, at the same time, it cannot be denied that workers have also played their part admirably well. The workers in some of the workshops have increased their efficiency and played their role in the achievement of the goal of coping with the increased workload without any fresh investment of capital on the part of the Board. Under the circumstances, in my opinion, a stage is now reached when both the Board and the workers can relax and if, after the incentive cadres have been fixed on the principles already approved by me, any vacancy arises in the cadre, then, without making a fetish of the manpower ratio or its effect on the productivity of a workshop, promotions should not be denied especially if the variation in the productivity target is justified by local circumstances. I suggest that the Board should bear these principles in mind when scrutinising the returns of out-turn of work by railway administrations.

Implementation of man-power ratio

3.24. One of the main demands of the Federation is that the Board should be compelled to maintain the ratio of 3:1:1. The argument is that the Board having laid down the ratio, it is its duty to see that the ratio is respected. As I have already mentioned, the main complaint of Mr. Kulkarni now is that the ratio in regard to semi-skilled workers is not being maintained by the Board. The variation in regard to this ratio is .3. From this, Mr. Kulkarni's argument is that in no case, should the ratio in respect of any of the categories be disturbed. I do not think I can accede to this demand. In my opinion, the ratio has not been fixed by the Board as a be-all and end-all, a *summum bonum*, which has got to be attained at any cost. As the evidence of the Deputy Director shows, the ratio has been arrived at on the basis of the experience gathered by the Board as a result of the working of the various workshops. But the important fact which should be remembered is that it is, after all, a generalisation and that it could not have been intended that the ratio should apply to all workshops irrespective of the level of efficiency at which they may be. If the ratio were to be used in this manner, then, in my opinion, it will work hardships on workmen as well as on railway administration. The correct principle to follow is to determine the number of direct workers required by a workshop and, thereafter, to determine the number of assistants required for an optimum out-turn of skilled work. In doing so, the railway administration may bear in mind the ratio laid down by the Board but if, in a particular case, the railway administration comes to the conclusion that the ratio in a particular shop should be higher or lower on an overall consideration of the requirements of the workshop, the workshop administration should not be deterred from determining its cadre strength accordingly. From the point of view of the administration, there is one very good reason as to why it should not be deterred from doing so. If, after considering the requirements of each section of all its shops the administration comes to the conclusion that the average team of three workers in that shop requires more than one semi-skilled or unskilled worker, it would be bad economics for the workshop administration not to appoint additional semi-skilled or unskilled worker, as otherwise, the workshop administration will have to exact semi-skilled work from skilled worker and/or unskilled work from skilled or semi-skilled worker. Conversely, it would be equally bad economics, though on an average a team of three workers does not require a semi-skilled worker or an unskilled worker, for the workshop administration to appoint one simply because such ratio requires to be maintained on an all-India basis. Under the circumstances, all that I can say is that, whilst an effort may be made by the Board to see that the ratio which it has fixed on an overall basis is not radically disturbed, it should permit suitable variations as regards a particular workshop and a workshop administration should not be fettered in fixing a proper ratio for itself in determining its cadre strength by reason of the fact that it cannot conform to the above ratio.

Offloading and Private purchases

3.25. Another situation which has emerged from the evidence is that promotions were affected (1) either by offloading items to private trades, or (2) by purchasing items from private trades though such items could have been produced in the workshops concerned. The Board has denied in its reply that such things have taken place. However, there is positive evidence before me to the effect that, in some workshops, offloading has taken place. Witnesses Philips and Rao have given lists of the items which have been offloaded or which have been purchased from private trades. The principles which should guide workshops are not in dispute. Offloading can take place either on the ground of cost factor or incapacity of the workshop to produce the item or the non-availability of raw materials. In fact, the Board has been liberal inasmuch as it has ordered that offloading should not take place even if the cost of the production of an item is higher by 25 per cent than the price at which the item concerned can be purchased in the market. Purchase of items from private sources can be resorted to if such purchase is inevitable in order to maintain continuity of production. The Board has not adduced any evidence to show that offloading or private purchase in regard to which the above evidence is given was justified on the principles enunciated above. Under the circumstances, in my opinion, it is necessary that the principles should be reiterated and the workshop administrations impressed that offloading or private purchase should not take place in violation of those principles.

3.26. One of the allegations made by the Federation in its Statement of Demands is that promotions have been arrested also because of elimination of certain processes in manufacturing. However, no evidence has been adduced in support of this allegation.

Periodical trade tests

3.27. Some of the witnesses have deposed that promotions also were arrested because the Trade Tests were not periodically and regularly held and that, in some workshops, though panels of workmen qualified for promotion to semi-skilled and skilled grades existed, no steps had been taken for making promotions. Witnesses Philips and Rao have given instances of this kind in regard to their workshops. In my opinion, workshop administration must be impressed the desirability of holding Trade Tests at regular intervals so that a vacancy may not remain unfilled on the ground that a qualified workman is not available for promotion.

Training facilities for unskilled workers

3.28. The Federation has alleged in its Statement of Demands that training facilities were not afforded to unskilled staff though a policy to that effect had been declared by the Board. However, no evidence has been adduced on this score, nor has the Federation indicated what kind of training facilities should be given to unskilled staff. In the absence of any such evidence, I am unable to express any opinion on the subject.

Promotional Prospects of Basic Tradesmen

3.29. Another ground in regard to barring or retardation of promotional prospects relates to BTMs. It is contended that, though the posts of BTMs are trainee posts, a large number of BTMs are included in the incentive cadres or in the cadres of leave reserves; that BTMs were made to do regular work though they were trainees and that, in some cases, they were made to work as skilled workers and were still borne on the cadre of semi-skilled workers. It is also contended that, because a large number of the posts of BTMs were created in the past, some of these BTMs have been absorbed as semi-skilled workers or absorbed in leave reserve posts against semi-skilled workers. In my opinion, all these grievances are justified, though some of them have since been redressed. In 1965, the Board issued definite instructions that the posts of BTMs should be regarded as trainee posts and that only such of the unskilled workers should be promoted to those posts as could, after the training is over, be absorbed in the cadre of skilled workers. However, there is definite evidence before me that, in spite of the orders having been issued in 1965, they have not yet been executed in some workshops. There is also evidence of Govindrajan who says that BTMs are included in the incentive cadres. His evidence is that, formerly there were four hundred and odd BTMs in his workshop; that, after the Board's aforesaid order, 250 have been upgraded as skilled workers, that 50 have been down-graded and that 122 of them have been absorbed in leave reserve posts of semi-skilled workers. The evidence of witness Deshmukh is that in his Parel workshop, the posts of BTMs have been converted into semi-skilled posts in some Trades mentioned by him and that those BTMs were now designated as semi-skilled (BTMs). There is also evidence before me to the effect that some of the BTMs were or are used as skilled workers although they were borne on the cadres of BTMs. There is no doubt whatsoever that not only the aforesaid procedures constitute a violation of the Board's order but they have definitely affected the promotion prospects of unskilled and semi-skilled workers. Mr. Mahadevan was good enough to state that immediate steps would be taken to rectify the above state of affairs and that proper instructions would be issued in the matters. In my opinion, therefore, directions also require to be issued to the workshop administrations that BTMs should be regarded as trainee workers; that they should be promoted, if found fit, as skilled workers after their period of training is over; that they should not form part of incentive cadres or leave reserve cadres and that they should not be used as skilled workers without paying them as such.

Stagnation of semi-skilled and unskilled workers

3.30. That leads me to a consideration of some of the results of non-filling up of vacancies. The evidence is that some of the results are that whereas formerly an unskilled worker used to take 5 to 8 years to be promoted to the skilled grade, he now takes more than 12 to 15 years to do so and that, there are some instances in which unskilled workers have stagnated in the scale for more than 20 to 25 years and that,

whereas formerly semi-skilled workers and BTMs used to take 7 to 8 years to be promoted to the skilled grade, they now take 12 to 15 years to do so. For example, witness Rao says that no unskilled worker has been promoted in his workshop since the introduction of the Scheme and that there is no knowing as to when one will be promoted, although he qualifies that statement by saying that the position has somewhat improved by an order for recruitment of 100 unskilled workers since January 1970. However, he still maintains that the recruitment of 100 unskilled workers is against the total of 200 vacancies and that these 100 vacancies still require to be filled up. He further deposes that, for about the last eight years, no promotion has taken place from the semi-skilled to the skilled grade in his workshop. Witness Misra of Charbaug states that many unskilled workers still await promotions for the last more than 20 years and that more than 60 per cent of the staff in the unskilled grade is stagnating since that time. The Deputy Director states that the result of the surveys undertaken in 1962-63 and 1968-69 was that the percentage of workers in the unskilled grade who stagnated for more than 12 years was 4.5 and that the percentage of semi-skilled workers and BTMs who stagnated for the same period was 9.7. There is some controversy regarding the exact meaning of the evidence of the Deputy Director. Mr. Mahadevan contends that the witness did not mean to state that the above workers were stagnating at the maximum of the pay-scale but that he meant that those workers had not received promotions although they had worked in the concerned grade for more than 12 years. Whichever way the matter is looked at, there is no doubt whatsoever that the above state of affairs must be regarded to be highly unsatisfactory. It is true that a worker has no right of promotion to a higher grade and that cadres cannot be created so as to suit the requirements of his promotion. But, at the same time, a worker, who otherwise qualifies himself for promotion, is bound to feel frustrated if he does not get any promotion whatsoever for such a long period as 12 years after first entry into his grade. The Board has recently passed an order to the effect that if any worker stagnates at the maximum of the scale for more than two years, then, he should be granted one increment. Though this order mollifies the rigour of the situation somewhat, in my opinion, having regard to the ratio of 3:1:1 which has now been laid down, if an unskilled or semi-skilled worker, though he qualifies himself for promotion and has no chance of promotion for a period of 12 years, then, he deserves somewhat better treatment than what has been granted to him by the Board. In regard to those workers who were recruited before 1958 or who were promoted to the semi-skilled grade before that year, in my opinion, their cases deserve to be considered more sympathetically, especially in view of the fact that they have contributed towards the success of the Scheme. Under the circumstances, I have come to the conclusion that if an unskilled or semi-skilled worker/BTM has stagnated in his scale for more than 12 years even though he is otherwise fit for promotion, then, he should be granted one increment at the interval of every three years thereafter. In my opinion, such a measure is necessary to prevent frustration

amongst workers. Frustration is the matrix in which discontent is born and it is well-known that discontent is the mother of industrial turmoil.

Pooling of unskilled cadres

3.31. The Federation has suggested two or three measures for improving the promotional prospects of workers. It is stated that the promotional chances of unskilled workers in different trades are not equal and that, in order to remove the inequality, the cadres of unskilled workers in some of the trades should be combined, so that they could have an equal opportunity of promotion. The Board has passed recently an order to this effect with a proviso that, in such a case, the ratio of 3:1:1 should not come to be disturbed. The Deputy Director, however, agrees that the manpower ratio should not necessarily be applied to every trade. In my opinion, if the above proviso is removed and the order is maintained, it should meet the needs of the situation. However, the Deputy Director deposes that unskilled workers are reluctant to go from one section to another or to change their trades and that, this creates difficulties in implementation of the above order. It is for the Federation to take steps to persuade the workers to avail themselves of the above order. In my opinion, therefore, the order in regard to pooling of unskilled workers requires to be amended so as to remove the proviso that the ratio of 3:1:1 should be maintained.

Ban on recruitment of Trade Apprentices

3.32. Another measure suggested by the Federation is that recruitment of Trade Apprentices should be stopped altogether so that all vacancies in the skilled grade may be fully available to semi-skilled workers and BTMs. Mr. Mahadevan strongly opposes this proposal. However, I notice that this source of recruitment has not been tapped by the Board since 1958 and that, in or about 1960, an order was passed banning recruitment of Trade Apprentices temporarily. Under the circumstances, the suggested measure appears to be of academic interest only for the present at least. However, I am not prepared to hold that recruitment of Trade Apprentices should be banned permanently. I agree with Mr. Mahadevan's contention that it would conduce to greater efficiency if at least a part of skilled workers is recruited at an earlier age so that they not only can do their work more skilfully than others but also can aspire to man supervisory posts. Semi-skilled workers and BTMs have already benefited by the fact that 81 per cent of the promotions to the skilled grade have taken place during the working of the Scheme from their cadres and they are likely to benefit still more from the temporary ban on the recruitment of Trade Apprentices. Under the circumstances, I am not prepared to hold that recruitment of Trade Apprentices should be banned permanently. Moreover, it is noteworthy that, unskilled workers can compete for direct recruitment as Trade Apprentices with the age relaxation of three years.

3.33. In my opinion, whereas the history of past promotional prospects has not been without its dark patches, the future in regard to the same is bright,

specially after the fixation of the ratio of 3:1:1. From that ratio, it is clear that an unskilled worker now has a cent per cent chance of being promoted to the grade of semi-skilled and a semi-skilled worker has 150 per cent chance of being promoted to the grade of skilled worker. Moreover, an unskilled worker has not only the chance of being promoted to the semi-skilled grade, but, has also the privilege of competing for recruitment as a Trade Apprentice. A skilled worker has further the chance of being promoted to the grade of highly skilled worker grades I and II, the percentage allotted for grade II being 14 and that allotted for grade I being 6. In addition to this, the skilled workers have the chance of being promoted to Sub-supervisory staff as Mistries and Mistries, in their turn along with skilled workers, have a further avenue of promotion to the post of Chargeman C, the percentage reserved for promotion being 20. Besides, skilled workers who possess minimum prescribed educational qualification have also the privilege of competing for being selected as Apprentices-Mechanic, the percentage for this purpose being 20. Thus, whereas, in the past the picture was one of a chiaroscuro of light and shade, that which emerges now is full of light with no shade or, at least, smaller variations of shades.

Upgradation of Mistries' posts

3.34. That brings me to the grievances of the Federation in regard to Mistries.

3.35. The first grievance is that, though the Board has issued recently instructions that Mistries need not supervise the work of highly skilled grade I workmen, in fact, they still supervise their work. In its reply, the Board has denied that this is so. However, there is positive, overwhelming and uncontradicted testimony before me which shows that there are a number of Mistries in various workshops who do supervise the work of highly skilled grade I workmen. Instances of such supervision are quoted in the evidence given by witnesses Philips, Vazirani, Rao, Govindrajan, Hussainey, Misra and Ghosh. In fact, the Works Managers of two workshops which I visited in Bombay frankly stated that they were not aware of any such orders having been passed by the Board. Now, the posts of highly skilled grade I came to be created as a result of the Award given by Shri Sankar Saran. As already stated, 6 per cent of skilled posts has been allotted to this grade. The grade which has been fixed for the highly skilled workman grade I is Rs. 175-240. The grade of the Mistries is Rs. 150-240. Therefore, it is obvious that the grade of highly skilled grade I workman is higher than that of a Mistry who supervises his work. The Federation contends that this is an anomalous position and must be rectified. It is anomalous that a supervisor should be in a lower grade than that of the workman whom he supervises. Mr. Mahadevan contends that this is not a new situation and that such a situation has been existing since before 1950-51. I do not think this makes any difference. The Board itself has realised the anomaly of the situation and passed the above order. Now, the consistent and uniform evidence before me is that the above order is impracticable and that perhaps, therefore, it has not been implemented. The evidence is that all workers of whatever

grade working in a section work in a team and that, it is their joint operations which ultimately result in a finished product. Therefore, the evidence is that, in spite of the Board's order that a Mistry need not supervise the work of highly skilled grade I workman a Mistry has to supervise his work in order that the team work may not suffer. Mr. Mahadevan's contention is that, even though this be so, unless the Mistry himself was formerly a master craftsman, he would not be in a position to give any technical guidance or exercise any control over the work of highly skilled grade I workman. Therefore, his contention is that the control which a Mistry exercises over such workmen is only nominal and, under the circumstances, no anomaly is in existence. I cannot agree. The evidence discloses that it is the Mistry who allots work to highly skilled grade I workman and who is responsible for the quality of the work turned out by such workmen and also for their discipline. Under the circumstances, in my opinion, the claim made by the Federation is justified and deserves to be granted. The evidence of Philips is that, in some of the shops in his workshop, there has been a nominal compliance only of the above order inasmuch as a Chargeman C has nominally been placed over the Mistry who supervises the work of highly skilled grade I workmen but that the actual supervision is still done by the Mistry concerned and that the Chargeman C does not earn any bonus over the out-turn of the work in the newly added charge. This is not only a nominal compliance but an evasion of the Board's order that a Mistry's need not supervise the work of a highly skilled worker grade I. Under the circumstances, I hold that, in all those cases where Mistries supervise the work of highly skilled grade I workman or workmen, they should be in the higher grade of Rs. 175-240 instead of Rs. 150-240.

3.36. The main demand of the Federation in regard to the Mistries is that, Mistries who are in independent charge of a section should be upgraded to the post of Chargeman C. Considerable evidence has been adduced before me from various workshops from which it appears that, though the percentage given by the Federation of independent Mistries is very much exaggerated, there are some Mistries who are in independent charge of their sections in each of the workshops in regard to which evidence has been adduced. There is also evidence to the effect that, in some workshops, the sections which are supervised by Chargemen during day are supervised by independent Mistries in night shifts. This fact is admitted by the Deputy Director, the witness of the Board. Therefore, the allegation of the Board that there are no independent Mistries in any workshop is not correct. An independent Mistry is one who is directly supervising the operation of a team of workers and whose supervision in its turn is not supervised by a Chargeman of any grade. Consequently, the result is that such a Mistry not only performs the duties of an ordinary Mistry but also performs the duties assigned to a Chargeman. Now, there is no doubt whatsoever that there is considerable difference between the duties of a Mistry and those of a Chargeman. A Mistry is usually an assistant to a Chargeman and supervises a group of workers under the direction and

control of a Chargeman. He has no direct connection with the Foreman. On the other hand, the instances of the independent Mistries given by the witnesses show that such Mistries take their instructions directly from Foreman. The Board's allegation is that a Mistry is only in physical supervision over a team of workers whereas a Chargeman is a technical supervisor. This is contradicted by the Deputy Director who is fair enough to admit that Mistries are also technical supervisors and that, in fact, in some cases, they are able to demonstrate the manner in which a job is to be performed better than others, having done such jobs themselves as skilled workers. The evidence of Hussainey is that, in his workshop, some independent Mistries are in charge of sections which are technically important and some others who are in charge of sections which are more important than the sections supervised by Chargeman C. Under the circumstances, I have come to the conclusion that the above demand of the Federation is justified. It is true that, generally speaking, an independent Mistry supervises over a less number of workers than ordinarily a Chargeman does and that, therefore, the area of his responsibility is not commensurate with that of an ordinary Chargeman but this is not always so. The evidence of Hussainey is that, in his workshop some independent Mistries supervise 11 to 28 workmen. Govindrajan states that the maximum number of men supervised in his workshop by an independent Mistry is 15 of whom 10 are skilled workers. As already stated, the evidence of Hussainey is also that some of them are controlling sections which are not only technically important but which are technically more important than sections controlled by some Chargemen. In my opinion, it is not proper or fair to pay such an independent Mistry the wages of a Mistry when he is actually discharging the duties and functions of a Chargeman. Under the circumstances, in my opinion, the posts where independent Mistries hold charges of sections should be upgraded to those of Chargemen C and appointments to those posts made accordingly. This would mean that there would be an increase in the number of posts of Chargeman C which will be equivalent to the posts at present held by independent Mistries.

3.37. Another grievance of the Federation is that some Chargemen who were designated as Chargemen D in some of the workshops were wrongly re-designated as Mistries. It appears that an agreement was reached between the Federation and the Board in 1957 under which it was agreed that no Chargeman should be in a grade lower than that of Rs. 150-225 (now Rs. 205-280). Chargemen D in the above workshops were in a lower grade. The Board counter this allegation by stating that no specific instances were quoted by the Federation to show that Chargemen D had been re-designated as Mistries. On this, in its rejoinder, the Federation mentioned that it had brought such instances to the notice of the Board in regard to the workshop at Dohad on Western Railway and Loco Sheds on Southern Railway but that no action was taken by the Board upto the date of the rejoinder. In response to a query by me, the Board has now replied that the cases which had been brought to the notice of the Board had been considered by a senior officer

on their individual merits and that, on the facts of each case, the necessary number of posts in the various workshops including those in Dohad Workshop were allotted the scale of Rs. 150-225 (now Rs. 205-280). Apart from the fact that Mr. Kulkarni does not press the demand as regards Loco Sheds, in view of the absence of any evidence to the effect that any such cases had been wrongly decided, it is not possible to accede to the above demand of the Federation.

Equation of Chargeman D and Chargehands

3.38. Another demand of the Federation is that, on certain railways, there are supervisors who are designated as Chargehands and that, though these supervisors discharge the duties of Chargemen, they have been wrongly designated as Mistries. It is contended that such Chargehands are in independent charge and shoulder the same responsibilities as those of Chargemen. In support of this allegation, the Federation mainly relies upon Organisation Order No. 48/61 dated 2-11-1961 issued by Deputy C.M.E., Eastern Railway, Jamalpur, in which he has enumerated the duties of Chargehands and Chargemen in the workshops under his control. From the enumeration of those duties, it appears that the difference between the duties of these two supervisors is only that which is mentioned by him in Item No. 2.9 of his order. However, the Board contends that re-designation was done on the merits of each case on the railways concerned. The Federation has not adduced any evidence to show that the individual decision given in regard to each Chargehand was improper, wrong or unfair. Under the circumstances, in my opinion, this demand of the Federation deserves to be rejected.

Quota of promotion of rankers to Chargemen, C

3.39. Another demand of the Federation is that the quota at present allotted to Mistries and skilled workers for promotion as Chargemen C and for recruitment as Apprentices-Mechanic should be increased. As already stated, the quota reserved for promotion is 20 per cent and the quota reserved for recruitment as Apprentices-Mechanic is 25 per cent of the balance of 80 per cent, that is, 20 per cent of the whole. The infirmity in this demand is that not only the Federation has not adduced any evidence in support of the above demand but it has not even cared to indicate the desired increase in the percentage either for promotion or for recruitment aforesaid. Mr. Kulkarni generally supports the above demand on the ground that with the increase in literacy and inflow of educated workers in the ranks, the quota can easily be revised without detriment to the quality of supervision assigned to Chargemen. Apart from the fact that no evidence has been led nor any materials placed in this respect, there is considerable force in the argument of Mr. Mahadevan that, since at least the ban on recruitment of unskilled workers, the above argument is not valid inasmuch as the standard of literacy and educational qualifications of persons who were recruited before 1958 either as unskilled workers or as Trade Apprentices were below what Mr. Kulkarni contends for. In fact, the evidence of Vazirani of Ajmer Workshop is that, because of qualification restrictions, hardly

two or three skilled workers in his workshop were recruited from the reserved quota of 20 per cent. In my opinion, the contention of the Board is right that nothing should be done which affects the standard of a person who would hold the charge of a Chargeman, that a Chargeman plays a key role in the working of a workshop and that if he is not properly and technically qualified and not sufficiently qualified to display qualities of leadership, the quality of supervision would suffer on the whole. It is necessary that right type of persons should be inducted at this stage, not only for the purpose of manning the ranks of Chargemen but also for the purpose of filling the higher posts of Foremen A and B. Another argument on which Mr. Kulkarni sustains this demand is that a number of Apprentices-Mechanic leave their jobs after the period of their bond is over and that this constitutes national waste. He says that, instead of wasting time and money on these Apprentices-Mechanic who are always in search of and find better jobs, it is better to promote people from ranks who have served the workshops for a number of years and are not likely to leave. I do not think the evidence justifies the premises on which the argument is based. It is true that there is some evidence that migration has taken place in some workshops, but there is nothing on the record to show that the problem is of such an acute nature that any importance can be attached to it. There is no evidence in the case to show that vacancies have arisen as a result of the above migration and that the same cannot be filled up for want of Apprentices-Mechanic. Under the circumstances, in my opinion, the above demand of the Federation also does not deserve to be granted.

Percentage distribution of grades for Chargemen

3.40. The sole demand relating to Chargemen is that the percentage distribution of the posts of Chargemen in different grades should be increased. As already stated, there are Chargemen of three grades designated as A, B and C. The present percentage distribution of these three grades is as follows :

Chargemen A — 28 per cent :

Chargemen B — 35 per cent :

Chargemen C — 37 per cent :

The demand of the Federation is that the percentage of these grades should be as follows :

Chargemen A — 40 per cent :

Chargemen B — 40 per cent :

Chargemen C — 20 per cent.

This demand is opposed by the Board. The evidence discloses that the present percentage distribution of the grades was arrived at by agreement between the Board and the Federation in or about 1958. It appears that this percentage distribution of the grades amongst Chargemen is a peculiar feature of workshop administration and, although such percentage distribution is to be found in some other departments of railways, such a distribution is not universal. The

percentage distribution is rooted in history which it is not necessary for me to detail as, in my opinion, it is not relevant for the purpose of disposing of the present demand. However, it is common ground that percentage distribution which initially was introduced with a view to adjusting the different grades which were existing in workshops for Chargemen, was revised from time to time. According to Mr. Mahadevan, one of the grounds on which such a revision was undertaken was increase in the work allotted or in the intensity of supervision. According to the Deputy Director, three factors were borne in mind in fixing percentages of grades : (1) skill, (2) responsibility, and (3) working conditions. However, though this is so, it is not disputed that the actual percentage was not based on an exact evaluation of the worth of a charge, in each and every workshop. The percentage was fixed on an all-India basis. The understanding between the Federation and the Board was that that percentage was to apply to each workshop. However, each workshop does not appear to have assigned the grades to sections in the shops on the worth of the charges but appears to have distributed the grades on an *ad hoc* basis, the sole guide being the previous practice and tradition in each workshop. It is in the light of the above circumstances that the present demand of the Federation has to be evaluated.

3.41. Before I do so, I wish to refer to one fact which has emerged from the evidence, and it is that, in some workshops, the percentage agreed to by the Board and the Federation is not being maintained. I do not propose to mention the workshops in which this is not done and the percentage which is exactly assigned in these workshops to the various grades because Mr. Mahadevan very fairly concedes that this is not right and he promises that the Board will take immediate steps and see that the percentage distribution of grades in those workshops is suitably revised so as to conform to the agreed percentage.

3.42. Another factor which has emerged from the evidence is that, whereas in some workshops the staff in an organisation known as Production Control Organisation (hereinafter called PCO) is being considered for the purpose of distributing the grade percentage, in some other workshops, it is not so done. Mr. Kulkarni argues that the staff of the PCO should be excluded in determining the percentage distribution on the agreed basis. The argument is two-fold. One is that the above organisation, as witness Philips states, was created in 1961 and therefore was not taken into account when the agreement was reached. The other argument is that the staff in the above organisation is an ex-cadre staff and, therefore, deserves to be excluded. The firm evidence on the subject is that though the above organisation has recently been streamlined or considerably enlarged in some workshops, the organisation is not entirely new as deposed to by Philips but that it has been in existence either in the same or similar shape since before the date of the above agreement. There is no evidence before me to show that when fixing the percentage distribution the staff of the aforesaid organisation was excluded or that such was the intention. The mere fact that the staff of the organisation

is ex-cadre does not appear to me to be a just ground. As already mentioned by me, the Mechanical Code envisages the establishment of a cadre and the fixation of additional posts which posts are bound to be temporary. There is no evidence before me that, in distributing the percentage the latter staff of the workshop was or is to be excluded. On the contrary, the implication all along appears to be that the temporary staff was also to be considered for the purpose of calculating the percentage distribution. Under the circumstances, though there is evidence to the effect that in some workshops the staff of the above organisation is excluded, I cannot accede to the demand that this should be done in all workshops.

3.43. Mr. Kulkarni justifies the demand for revision of percentage distribution mainly on four grounds. He says that it is necessary to revise the distribution (1) to remove the discrepancies in the matter of distribution of grades in different workshops, (2) to remove the same discrepancies in similar charges in some workshops, (3) to improve career prospects of Chargemen, and (4) to compensate them for increase in work and responsibility.

3.44. The evidence establishes the following matters very clearly : No yard-sticks have been prescribed for determining the conditions which would justify the creation of a charge. Similarly, no yard-sticks have been prescribed for fixing the worth of a charge so that it could be determined which conditions would justify the creation of which particular grade of a charge. Neither the Board nor the workshop administration has prescribed or circulated lists of duties which are to be performed by Chargemen or different grades of Chargemen. The result of the above omission is that chaos prevails as regards grades of Chargemen not only in different workshops but also in one and the same workshop. The evidence discloses that charges of the same worth in different workshops are held by different grades of Chargemen and that, in regard to some workshops, though charges are of equal value, they are manned by Chargemen of different grades. Mr. Kulkarni is right in contending that such a chaotic condition is bound to create dissatisfaction and even bitterness amongst Chargemen. The above state of affairs undoubtedly requires to be remedied, but the difficulty which arises in the way of the Federation is that the grant of its present demand will not improve the above situation. Whilst the re-distribution demanded by the Federation undoubtedly will improve the career prospects of Chargemen, it will not be helpful in the removal of the above anomalies. Such anomalies, in my opinion, can be removed only by undertaking a rational and scientific evaluation of the job of a Chargeman and determining which set of circumstances justifies the creation of charge A or B or C. Some witnesses of the Federation have admitted this. In fact, Mr. Kulkarni fairly states that he has no objection if such a task is undertaken in regard to each of the workshops and then the grades of the charges determined as a result of such a study. Witness Hussainey deposes that, in his opinion, the grades of Chargemen should be re-distributed on the basis of effective and purposeful supervision. He further deposes that, in order to do this, the work done in each shop will have to be evaluated. He

says that in order to justify the creation of a charge of A grade more skill, more experience and higher quality of work are required than those which would be required to create charges of grade B or C. The Deputy Director has also mentioned factors which, according to him, should go to evaluate the worth of a charge : (1) skill, (2) responsibility, and (3) working conditions. Under the circumstances, on general considerations, it appears to me that the problem of percentage re-distribution of charges can be resolved rationally only if such a task is performed. The Deputy Director deposes that such a task was undertaken by the Board in or about 1962. According to him, the Board formulated certain proposals for fixing the worth of charges and the same were circulated amongst workshop administrations for their opinion. That witness further deposes that the proposals were dropped. However, he does not know the reasons asto why this was so done. Mr. Mahadevan and Mr. Kulkarni are not agreed asto the reasons why the aforesaid matter was not pursued further. Mr. Mahadevan says that the matter was not pursued because the result was adverse to the interests of Chargemen themselves. Whilst challenging the aforesaid reason, Mr. Kulkarni says that the Federation was prepared to undertake the risk involved in undertaking the task of determining the number of charges in each workshop and determining their grades. In my opinion, this is a fair and reasonable offer. I do not see any reason asto why the task of pursuing the matter in the above manner should be shirked. However, it is for the parties to come to a mutual agreement on the subject. All that I can say is that the present demand of the Federation cannot be justified on the first two grounds which are relied upon by Mr. Kulkarni. In my opinion, as appears from the evidence, both the sides took a blind leap whilst determining the present percentage distribution and if I were to accede to the demand on the above two grounds, I would be taking a second blind leap and still the mal-adjustments complained of will not come to be removed.

3.45. That leaves for consideration the third and the fourth grounds on which the demand is supported. In the Statement of Demands, the Federation has put forward the above grounds to justify a revision of pay-scales of Chargemen. However, Mr. Kulkarni concedes that the latter was not within the purview of my Terms of Reference. At the stage of arguments, therefore, I suggested that the above grounds did not arise for my consideration. However, Mr. Mahadevan very fairly concedes that, traditionally, the increase of workload or responsibility has been considered by both the Board and the Federation as a good ground for re-distribution of percentage of charges. Under the circumstances, it is my duty to consider the above grounds on their own merits.

3.46. One of the points on which Mr. Kulkarni relies is that, during the last several years, either some Chargemen left their jobs or were blocked at the maximum of the scale for some years. For example. Malhotra says that during the last ten years, about 17 Apprentices-Mechanic left the railways for better jobs. Similarly, Ghosh says that during the same period, about 40 Chargemen left his workshop

for jobs in other concerns. That witness also says that 30 Chargemen out of 76 are stagnating at the maximum of the scale for more than three years. Witness Harchandan Singh says that 50 per cent of Chargemen A are stagnating at the maximum of the scale for the last three to five years and some of them are stagnating for the last seven years or more. I am not convinced that the problem of the migration of Chargemen has assumed a serious proportion, nor does the problem of stagnation appear to be of such a character as necessarily to be a factor to be taken into consideration for revising the percentage distribution of grades. Moreover, it is noteworthy that, as against the above evidence is to be pitted the evidence of witnesses Philips, Govindrajan and Ghosh which shows that all these witnesses drawn from the category of Chargemen had extremely rapid promotions. It is true that some of these witnesses say that their promotions were more accidental than regular but the fact is that out of 10 Chargemen witnesses examined in the case, as may as 6 had rapid promotions.

3.47. Now the increase in work or responsibility is stated to have taken place during the last ten years on following grounds : (1) introduction of the Scheme, (2) introduction of new lines, (3) modernisation of rolling stock and (4) introduction of new modifications.

3.48. Amongst duties enumerated by witnesses as being discharged by a Chargeman after the introduction of the Scheme are (1) to plan in advance the requirements of his charge, (2) to verify attendance of workmen who have come on duty, (3) to witness clock punching, (4) to distribute work amongst workmen with the assistance of his Mistry, (5) to suggest alternative arrangements for the work of absentee workmen, (6) to fill in a number of documents introduced as a result of the Scheme, (7) to procure raw materials and tools, (8) to see that the quality of work is maintained, (9) to submit personally the articles for inspection to the Inspection Cell of the PCO, (10) to co-ordinate work with that in other sections, (11) to maintain contact, and co-operate with the higher authorities, (12) to account for the occupation of the worker from minute-to-minute and to submit this accounting to the Accounts Department, (13) to see that the prescribed operations are not skipped over and short-cut methods are not adopted which would affect the quality of work, and (14) to maintain the target out-turns irrespective of the working days in a month. Now, it cannot be denied that all the above duties are not new duties which a Chargeman is called upon to perform after the introduction of the Scheme. Even before the introduction of the Scheme, a Chargeman played an important role in the workshop administration. There is no doubt that he did pivotal supervision work. Undoubtedly, he is primarily responsible for the work done in his section but that was so even before the introduction of the Scheme. However, witnesses have maintained that the intensity and responsibility of supervision have increased after such introduction. It is stated (1) that in order that the Scheme may be successful, a Chargeman is primarily responsible for the reduction of ineffective time, (2) that there being greater stress on quality control, the

Chargeman has to be more vigilant than before in supervising over the operations of workmen, (3) that since productivity has to be increased and productivity targets achieved, the Chargeman has to put in a greater effort than before, and (4) that minute-to-minute accounting has to be done to enable the authorities to calculate the saved time. Now, as against the aforesaid contentions, the Board's contention is that the Production Control Organisation has been streamlined so as to lighten the work of a Chargeman in a number of matters. In support of the latter contention, the Board mainly relies upon the evidence of the Deputy Director. That witness began his evidence by stating that the PCO was a new organisation which was introduced after the introduction of the Scheme. However, subsequently, the witness had to admit that such an organisation was in existence even earlier and that the duties which it is now performing are the duties which have been prescribed for that organisation in the Mechanical Code. However, the witness states that though this was so, that organisation was not as effective and as strong as it has now been made and that though there were some workshops in which it was in existence in the form in which it is now, the level of efficiency of the work done by it was different in different workshops. Though the initial evidence of the witness became considerably diluted in cross-examination, there is no doubt whatsoever that the above organisation is now performing important duties which, at least in some workshops, it was not performing before. That organisation has three Divisions which are described as (1) Planning, (2) Progress and (3) Inspection. Before the introduction of the Scheme, in a number of workshops, the Planning Division only issued a work order authorising the work but did not detail processes which were to be followed in doing the job. That Division now details such processes and also lays down the requirements of tools and raw materials. The Progress Division formerly kept track of the final product only but now it is chasing it from stage to stage. That Division in some of the workshops did not procure raw materials and tools but now it is the duty of that Division to do so. Formerly, the Inspection Division only inspected the final product in certain shops but now it is doing that work from stage to stage and also inspects the final product. It is the duty of that Division to forewarn the Chargemen about the quality of the work done under his charge. Now, whether the PCO was in existence in the form in which it is now or whether it has been streamlined after the introduction of the Scheme, in my opinion, does not make any difference so far as the claim made by the Federation is concerned. If it was in existence in the form in which it is now in existence, then, there has been no additional duty imposed upon the Chargemen. On the other hand, if it was not so in existence, then, there is no doubt whatsoever that that organisation is now performing services which are bound to lighten the work of the Chargeman, both at the initial and the interim stages. One of the main arguments of Mr. Kulkarni is that, because of shortage of raw materials, spare parts and tools, the work and responsibility of the Chargeman has increased considerably. It is true that the evidence of the Deputy Director that shortage position in regard to raw materials is hardly

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one or two per cent is an under-estimate. The Report of the Railway Accidents Enquiry Committee 1968 shows that shortage position is acute. But, at the same time, having regard to the duties cast upon the PCO, it is clear that the primary duty of supplying raw materials and tools is that of the Planning and Progress Divisions. I fail to see how a Chargeman can improve matters in the case of shortage of raw materials in his section except to bring it to the notice of his Foreman or to that of the above Organisation. If there are no such materials and tools available in the Stores Department, then, nothing further can be done by the Chargeman nor can the Chargeman be held responsible for any diminution in work. The evidence discloses that, whereas formerly the Chargeman was responsible for detailing processes which a particular operation had to undergo, those processes are now detailed in a Route Card which the Planning Division supplies to the workman along with other documents such as work order, material requirement slip and inspection form. This Route Card gives the operational details and the time which is required for performing each operation. The evidence of the Deputy Director is that such information was formerly contained in the Scroll Sheets but was not communicated to the Chargeman but that, under the Scheme, the same has got to be so communicated. But, contends Mr. Kulkarni, that the Chargeman has to exert himself more than what he did before in order to make the Scheme a success. However, there is vital difference between the conditions of supervision before and after the Scheme. The main factor in the Scheme is the motivation afforded to the worker to put his maximum effort so that he can earn as much bonus as he can. To the extent to which such motivation is introduced by the Scheme, there is no doubt that work and responsibility of Chargeman have been reduced. It is true that he has to exercise greater vigilance to see that no short-cut methods are adopted to earn greater bonus. But, in the performance of that task also Chargeman is helped by stage to stage inspection. As regards his minute-to-minute accounting, the evidence shows that a job card is furnished to each workman in which he has got to punch the time at which an operation commences and the time at which it ends. Witness Malhotra has given detailed evidence as regards the difficult conditions under which a Chargeman has to work. The upshot of his evidence is that a Chargeman has to come to the workshop before time and has to continue to work after shift hour is over. According to his evidence, because of the increase of work and responsibility, a Chargeman has on an average to work for one or one and a half hours per day more. I am unable to accept this evidence. In the first instance, except his solitary evidence, there is nothing else on the record to show that such conditions prevail in workshops. A number of Chargemen have been examined before me. If Malhotra's evidence was true, I would have expected corroboration from them. In any case, if Malhotra's evidence is correct, then, I have no doubt whatsoever that he would have claimed over-time. There is no evidence that he did so. Under the circumstances, I am not prepared to rely upon the evidence of Malhotra on the above point.

3.49. Taking an overall view of the whole picture and comparing the duties which a Chargeman performed before the introduction of the Scheme and thereafter, though it may be stated that, in some respects responsibility has been lightened, it is also true that work and responsibility have somewhat increased. It is also probable that the tempo of work may have also increased as a result of the Scheme. The Deputy Director deposes that the policy of the Board now is that the ratio between the rolling stock on the line and that awaiting repair should be increased. But such increase in work and responsibility of a Chargeman are inherent in the Scheme itself and it is exactly for that reason perhaps that a Chargeman is allowed bonus on the performance of his section. The evidence is that a Chargeman is paid bonus on the basis of that which is earned by his section. Under the circumstances, even on the basis that there has been some increase in the work and responsibility of Chargeman, the same is reflected in the bonus which is paid to him and, therefore, in my opinion, the increase in percentage distribution of the various grades of Chargemen cannot be justified on the above ground too.

3.50. There is no doubt whatsoever that additional lines have been introduced as a result of which the work and responsibility of a Chargeman must have increased. The evidence shows that in some workshops, new types of work have been introduced which I have mentioned whilst dealing with the question of vacancies. But all these new lines were introduced with a view to working out the Scheme. It is true that, as a result of the introduction of integral coaches, Bharat Earthmover Coaches and box type wagons, the repair work has become more sophisticated than what it was before. Witness Govindrajan has detailed the difference in the repair work of a conventional coach and that of an integral coach. The latter has undoubtedly created problems due to erosion. It is also true that the POH work also has considerably increased as a result of the increase in rolling stock. Further, periodicity of repair work in regard to integral coaches is more than that of conventional coaches. There is also evidence to show that several new modifications have been introduced. As regards the W.P. locos alone, the number of modifications works out at 241. As regards carriages, the number is 147. However, in my opinion, though the overall work has increased, it does not necessarily mean that the workload on Chargemen has correspondingly increased too. There is no evidence before me to show that the number of workmen or Chargemen have not also been increased to cope with the increased work. In fact, two of the witnesses admit that, as a result of the increase in the above kinds of work, the number of workmen have been increased too. It is true that there is some evidence to show that the number of persons supervised by Chargemen is more than what they can cope with but this is only opinion evidence. The witnesses themselves admit that the number of workmen to be supervised is not the sole criterion for determining the worth of a charge or its grade. Under the circumstances, on an overall view of the whole question, I have come to the conclusion that, whilst there is likelihood of some increase in the work and responsi-

lity of Chargemen; the increase is not of such an order that necessarily a stage has come for redistributing the agreed percentage of grades of Chargemen. Mr. Kulkarni states that because of the sophistication of machinery and instruments a Chargeman's responsibility has increased too. However, in my opinion, the contention of Mr. Mahadevan is right that, like all other supervisors a Chargeman, in order to enable him to discharge his duties, must be prepared to keep pace with technological developments and that, by itself, cannot be regarded as a good ground for the re-distribution claimed. Mr. Kulkarni further contends that the higher supervisory staff has been increased in several workshops and there is no reason why percentage distribution of Chargemen should not be increased too. Mr. Mahadevan contends that the superior supervisory staff had to be increased in order that workshop administration may play its due role in implementation of the Scheme, especially in the matter of supply of spare parts, raw materials, tools, etc., and for eliminating ineffective or unproductive time, so that maximum bonus may be earned and greater productivity achieved. I do not see how the circumstance of the increase in the strength of the superior supervisory staff can sustain the claim for percentage re-distribution of Chargemen's grades.

Percentage distribution of grades for Foreman

3.51. As regards Foremen, two questions are raised. The first is the question of percentage distribution of the charges held by Foremen A and B. It appears that, formerly, there were three grades of Foremen in existence, A, B and C and that, after the introduction of the Scheme, the last grade C was abolished and all Foremen C were promoted to the grade of Foreman B. The Federation's demand is that percentage distribution of the above two grades A and B should be in the ratio of 40 : 60. Now the distinction between percentage distribution amongst the various grades of Chargemen and those of Foremen lies in this that, whereas the former percentage distribution is the result of an agreement in which distribution amongst the various grades was done on an *ad hoc* basis, the grades of Foremen A and B are fixed on merits on the basis of the worth of the charges of Foremen in each workshop. Therefore, the support which is sought to be derived by justifying the above demand on the same grounds as those on which re-distribution of grades of Chargemen is demanded is wanting. Apart from this consideration, in my opinion, the number of posts at present assigned amongst Foremen A and B almost approximate to the demand which is made by the Federation. The total number of posts of Foremen in all the workshops is approximately 1002 which is distributed amongst Foremen A and B as follows :

Foremen A — 396.

Foremen B — 606.

The percentage distribution works out at 39 : 61 for Foremen A and B respectively. The reply of the Board shows that in some of the workshops the percentage is higher than 40 per cent for Foremen A and slightly less for Foremen B in others. Therefore,

if the claimed ratio were to be adopted, the demand is likely to do some harm to the cause of Foremen in some of the workshops. On the whole, I have come to the conclusion that the demand for according the claimed percentage to the grades of Foremen A and B also deserves to be rejected.

Grant of special pay to Foremen

3.52. The second demand of the Federation as regards Foremen is that Foremen A should be granted a special pay of Rs. 150/- per month and that Foremen B should be granted a special pay of Rs. 100/- per month. This demand is mainly based on the submission that the work and responsibility of Foremen A and Foremen B do not materially differ from the work and responsibility of their counterparts designated in the production units as Shop Superintendents and Assistant Shop Superintendents who are being granted such a special pay. The evidence discloses that the post of a Shop Superintendent in a production unit corresponds to the post of a Foreman A in a workshop and that of an Assistant Shop Superintendent in a production unit corresponds to that of Foreman B in a workshop. The Board's reply is that no special pay is granted to an Assistant Shop Superintendent. But the evidence discloses that, before the Second Pay Commission's Report, an Assistant Shop Superintendent was in the scale of Rs. 300-400 and, after the recommendation contained in the Report of the Second Pay Commission, the same has been equated to Rs. 370-475 and, subsequently, raised to Rs. 450-575. The Board admits that a Shop Superintendent in a production unit is being granted a special pay of Rs. 150/- per month. However, it contends that the genesis of this special pay is to be found in the recommendation of the Second Pay Commission. Reference is to paragraph 54 of the Commission's Report at page 181. In that paragraph, the Commission recommends that the maximum of the scale of the highest grade of Foreman in a production workshop should be raised from Rs. 575/- to Rs. 650/- with a proviso that there should be an Efficiency Bar at Rs. 575/- which only those with high merit should be permitted to cross. However, the Commission adds a rider to the aforesaid recommendation in which it states that the above recommendation "will not apply to foremen in production workshops who are given additional remuneration in any other form such as special pay, etc." The Board's contention is that, at the time of the aforesaid recommendation, the Shop Superintendents in Chittaranjan Locomotive Works were being granted a special pay of Rs. 150/- per month and that, in view of the above rider, the railway administration continued to grant the above special pay. It is not disputed by the Board that the above special pay is now being granted not only in the Chittaranjan Locomotive Works but also in other production units which came into existence either before or after the above recommendation was made. For example, such special pay is being granted to Shop Superintendents in ICF and DLW.

3.53. Now, one of the arguments on which Mr. Kulkarni supports the above demand is that the Board has not correctly interpreted the recommendation of

the Pay Commission. His contention is that, the higher maximum of the scale recommended by the Commission was not only for Foremen in production units but it was also meant for Foremen in workshops. I am unable to agree with this contention of Mr. Kulkarni. In my opinion, the paragraph, read as a whole, does not leave any doubt that the Commission's recommendation is in respect of only production units as distinguished from repair workshops. The rider is intended to be applied only to those production units in which a Foreman is in receipt of a higher additional remuneration in any form.

3.54. However, though this is so, I cannot agree with the contention of the Board that the above conclusion clinches the issue. The question of the grant of a special pay to Foremen A and B has been referred to me for decision. It has been so referred after full consciousness of the above recommendation of the Pay Commission. Therefore, in my opinion, I am entitled to consider on its own merits the demand of the Federation that the special pay as claimed should be granted to Foremen concerned.

3.55. Now, as already stated, the main ground on which the Federation sustains the above demand is that the work of Foremen A and B does not materially differ from the work of their counterparts, viz. the Shop Superintendents and Assistant Shop Superintendents in production units. In my opinion, there is overwhelming evidence in the case to support this contention of the Federation. The evidence discloses that both a production unit and a workshop have three Divisions and that two of these Divisions are common, and whereas the third Division in a production unit consists of an Assembly Division only, that in a workshop consists of both Repair and Assembly Divisions. The evidence also discloses that there are a number of shops which are common also in both the above works. It is true that, whereas the only work which is done in a production unit is that of manufacturing rolling stock, the primary work of a workshop is repairing such stock; but, the evidence does not leave any doubt that workshops also do manufacturing work. Before the Furnishing Unit of the ICF was established, the Perambur Repair Workshop and some other railway workshops used to furnish the ICF Shells. So also, the furnishing of the meter gauge coaches was assigned to the Ajmer Carriage Workshop. The Golden Rock Workshop manufactures box type and open type wagons. The Ajmer Workshop manufactured locos for a period of more than forty years and, during that period, it manufactured in all about 444 locos, the quality of which was described as being of a high order. Both the Matunga Carriage Workshop and the Ajmer Carriage Workshop do carriage building work. It is true that they do not manufacture underframes but such underframes are either purchased from private trades or imported from foreign countries. The mere fact that the latter work cannot be undertaken by the aforesaid two workshops does not detract from its image as manufacturing units. Even so far as the Chittaranjan Locomotive Works and the Varanasi Diesel Locomotive Works are concerned, they did only assembly work for a certain number of years. Even now the ICF purchases items from

private trade and the Chittaranjan Loco Works imports some foreign components. None of these production units manufactures rubber parts all of which have to be purchased from private trades or imported from outside. The Mahalaxmi Wagon Workshop built wagons. The Ghaziabad Workshop manufactures equipment for the Signal & Telecommunication Department. In fact the evidence is that the major portion of its work is manufacturing. It also manufactures mechanical and electrical equipments. The Electrical Department of the Ajmer Workshop manufactures dynamos, switch-gears, other electrical equipments and point machines. The Liluah Workshop manufactured during the last ten years a number of items, some of which were formerly imported or procured from private trades. All the workshops manufacture component parts which have to be replaced in the rolling stock to be repaired. This is the normal work of any workshop. Not only this, but, workshops manufacture spare parts to be supplied to open lines. Whereas the production units manufacture components of only those types of rolling stock which are in current use, a workshop, being required to repair several types of rolling stock, has to manufacture components of all kinds of rolling stock. In fact, the Loco Workshop at Charbaug manufactures 200 diesel components and they also undertake manufacture of components required by foreign countries. That workshop also manufactures components designed by R.D.S.O. for trial and modifications. According to Hussainey and Misra, their workshops manufacture about 800 items every year. Even the items which have to be purchased from private trades have sometimes to be further machined to suit factory requirements. It is true that there are some differences between a manufacturing unit and a workshop. The plant, machinery and processing in a production unit are more sophisticated than those in a workshop but, at the same time, there is no doubt whatsoever that, whereas the processes in a production unit are more or less stereotyped, those in a workshop are of a varied nature. The range of technical knowledge which a Foreman in a workshop requires to possess is somewhat greater than that which a Foreman in a production unit is required to possess. It is true that there are some types of work which a production unit alone can do and a workshop cannot do, such as manufacture of ICF coach shells, bogies and springs, and the bogie portions of coaches, but a workshop can manufacture turnunders, side panels of ICF coaches and some of the workshops can do even their trough-floors. The main difference between a production unit and a workshop is that a production unit manufactures its parts on a mass scale whereas a workshop manufactures parts on a limited scale. It is true that a workshop cannot be converted into a production unit at once since manufacture of components on a limited scale would be uneconomical. Under the circumstances, in my opinion, although there are some differences between a manufacturing unit and a workshop, so far as the work of a Foreman is concerned, there does not appear to be much difference. On the contrary, it appears that a Foreman in a production unit works under easier conditions than a Foreman in a workshop. The latter having to do varied kinds of work has also to show greater re-

sourcefulness and better judgment than ordinarily a Foreman in a production unit has to do. The evidence shows that the Trade Tests for a Foreman in a workshop and those for a Shop Superintendent in a production unit are the same. Their qualifications for recruitment are also the same. The pay-scales of the persons supervised by both kinds of supervisors are the same upto the level of Chargeman A. Both of them constitute the apex of the sub-supervisory staff. The only plea which is put forward for making a distinction between the two sets of supervisors is that, in a production unit if the manufacture of a component is held up or delayed, then, the out-turn of the whole unit will suffer, whereas, in a workshop, under such circumstances the work will not be stopped but the work of other type can be undertaken since all kinds of work can be done by such workshops. I fail to see how that circumstance can be a true differential. Holding-up or delaying of work in a production unit will certainly be a serious matter but that is more than compensated by the fact that the work in a production unit is not begun unless raw materials and tools are certified. Another differential is argued to be financial stakes involved in the two kinds of works. It is stated that whereas the highest financial stake of a workshop is four crore, that in a production unit is twenty crore. The number of employees is also made as one of the grounds of distinction; the highest in a workshop is 9900 and that in a production unit is 13000. Though the above facts are certainly some of the factors which may be borne in mind, on an overall view, in my opinion, those factors may be good grounds for paying higher scales to the upper supervisory staff. They do not appear to be good grounds for making a distinction at the level of Foremen. The Deputy Director admits that the workshops are in different stages of development and that some of the workshops are technologically as far advanced as some of the production units as regards certain processes. The evidence also discloses that some of the persons who occupy the position of Shop Superintendents in production units were initially drafted to those units without any additional training. It cannot also be disputed that Foremen in workshops can fill up posts of Shop Superintendent except that they would be required to be given some initial training which may qualify them for work in a production unit. Mr. Mahadevan submits that, having regard to the stakes involved and the mass scale production work undertaken by the production units, production units cannot be compared with workshops. Generally speaking, this may be true but what I am concerned with in the present case is the work and responsibility of Foremen involved in the two kinds of factories. In my opinion, having regard to all the above factors and especially having regard to the fact that the supervisors upto the level of Chargemen A in both the kinds of works are treated for the purpose of emoluments on the same level, there is no reason why these Foremen should be treated differently in the same matter. There are some more facts which have been brought on record which are of some relevance in this regard. The Scheme has been introduced in about 90 per cent of the shops in a workshop. There is no doubt whatsoever that a Foreman plays an important part in the implementation of the Scheme.

In any case, the part which he plays cannot be said to be less important than that which is played by a Chargeman. Still the fact is that a Foreman does not participate in the increased earnings arising from the implementation of the Scheme. This has led to a very curious result. There is considerable evidence in the case to show that when a Chargeman A is promoted to the post of Foreman B, his total emoluments go down by about Rs. 80/- to Rs. 100/- per month. This is due to the fact that the pay-scales are such that a Chargeman A's total emoluments are more than those of a Foreman B in view of the fact that the former earns a bonus and the latter does not. There is also some evidence to show that, in some shops, Foreman A and B are blocked for three or five years. According to Harchandan Singh, 60 per cent of Foremen A and 60 to 65 per cent of Foremen B in his workshop are stagnating for three to five years. Under all these circumstances, I have come to the conclusion that the demand of the Federation in regard to grant of special pay to Foremen A is justified. However, as regards Foremen B, there is one more fact which has to be borne in mind. As already stated, the Assistant Shop Superintendent does not get a special pay of Rs. 100/- per month but he is in a higher scale of pay. Mr. Kulkarni admits that, if the demand for grant of a special pay is allowed for Foremen B, then, at least for the first five years, a Foreman B will be earning more than what an Assistant Shop Superintendent will do. In my opinion, it will not be proper to permit this to be done. Under the circumstances, I decide that, as regards Foremen B, instead of being granted a special pay of Rs. 100/- per month, he should be in the higher grade of Rs. 450—575. In arriving at this decision, I have fully considered the fact that, in recent times, Foremen C have been promoted to the grade of Foremen B and that, therefore, those who formerly held the position of Foremen C are likely to get a double advantage within a short period. But, having regard to the fact that former Foremen C now promoted as Foremen B stand on the same footing as other Foremen B, in my opinion, it is but proper to treat both Foremen B and the former Foremen C on the same footing.

Application of decisions to workshops other than Mechanical

3.56. The next demand of the Federation is that benefits accruing to the staff as a result of this Reference should be made available also to Chargemen and Foremen in Electrical Workshops, Power Houses, Train Lighting and S & T Shops. I notice that the demand is formulated in the Statement of Demands in this manner but the point which has been formulated by Mr. Kulkarni is more limited. However, I propose to consider this demand in the context in which it is made in the Statement of Demands. Mr. Mahadevan is good enough to mention that since an Electrical Workshop and Train Lighting are governed by the Mechanical Code and that, in fact, the work of a Mechanical Workshop cannot be complete unless electrical work is done, whatever award is given in regard to Mechanical Workshops may also be applied to Electrical Workshops. One witness has been examined on behalf of the Federation in this regard. He is witness Nanag Ram Singh. His

evidence shows that the basis for recruitment of both Mechanical and Electrical Departments of the Ajmer Carriage & Wagon Workshop is the same as also the period of training and that, though the percentage of gradation in the case of Chargemen was the same for both the above departments, prior to 1958, there has been no upgrading whatsoever amongst Electrical Chargemen since 1958. He says that the present percentage distribution is as follows :

Chargemen A — 14.8.

Chargemen B — 18.8.

Chargemen C — 66.4.

The above percentages in regard to Chargemen A and B are far below those agreed to by the Board in regard to Mechanical Workshops. Therefore, I decide that percentage distribution of the above grades in all the Electrical Workshops should be revised so as to bring it into conformity with those agreed to by the Board and the Federation. I also hold that all decisions which I have given in regard to Mistries and Foremen also should be applied to such Workshops.

3.57. As regards Power Houses, there is not a little of evidence in the present case to support the demand made on their account. Mr. Kulkarni is unable to satisfy me that Power Houses are governed by all the provisions of the Mechanical Code. Under the circumstances, I hold that my decisions cannot be applied to Power Houses.

3.58. As regards Signal and Telecommunication Workshops, Mr. Mahadevan is also fair enough to concede that upto the Chargemen level it may be the same but he contends that the award as regards the higher echelons, that is, as regards Foremen, should not be applied. This contention is mainly based on the ground that Workshops of the above kind are still very small and that it will not be proper to extend to the Foremen the benefits which accrue to larger shops like Mechanical Workshops. It may be that a Signal & Telecommunication Workshop may be smaller in size than a Mechanical Workshop. I have not got evidence of the out-turn of all Signal & Telecommunication Workshops. I have got the out-turn of Ghaziabad Signal & Telecommunication Workshop which comes to about Rs. 24 lac per year. Although that Workshop is small in size, it manufactures very important items and major portion of its work is manufacturing. It appears from the evidence of Kuldev Raj that he was recruited as an Apprentice-Mechanic and that he received his training in all trades operated on mechanical and electrical sides of his workshop. That Workshop manufactures items required for the Workshop itself. The Workshop does not keep spare parts but manufactures component parts whenever required. It also undertakes manufacturing work for Signal Inspectors and other indentors working on railways, such as Block Inspectors, Telecommunication Inspectors, Permanent Way Inspectors, Station Masters, Section Controllers, etc. Under the circumstances, I decide that my award in regard to Chargemen and Foremen should also be applied to these Workshops.

3.59. It appears from the evidence of the above witness that his other grievances are (1) that semi-skilled workers exist in some trades which have been classified as skilled and (2) that the ratio of 3 : 1 : 1 for the artisan staff has not been applied to his workshop. Having regard to the concession of Mr. Mahadevan, the above grievances of this witness may be looked into by the Board.

Promotional prospects to Class II cadre

3.60. The Federation has urged in its Statement of Demands that the avenues of promotion for the post of Asstt. Mechanical Engineer should be further widened. The Board comments that this demand appears to be based on a misapprehension, inasmuch as appointments to Class II posts in railways are entirely made by promotion from Class III and that Class III servants are eligible for selection to Class II service in their respective departments and also for Personnel Officers' cadre along with supervisors of other departments. The Federation has not offered any comments on this in its Rejoinder nor has it adduced any evidence in support of the above claim. In fact, Mr. Kulkarni does not address any argument on this demand. Therefore, I do not propose to make any order on this demand.

Summary of Decisions

3.61. For the sake of convenience, I summarise below the decisions which I have arrived at in regard to this Term of Reference :—

- (1) Workshop administrations should prepare incentive cadres in the light of the principles enunciated by the Deputy Director and in the light of the provisions contained in paragraph 202 of the Mechanical Code. The incentive cadres must be fixed with due regard to the minimum requirements of each workshop and provision must be made for temporary additional posts which may be filled up at the discretion of the Works Manager. Attempts must be made, as far as possible, to fill up vacancies in the permanent incentive cadre, unless, in the opinion of the Works Manager, the filling up of such vacancies is not immediately justified, but, in such a contingency, the Works Manager must be directed to give up the excessive posts if the same are not required to be filled up within a certain period of time, say, about six months. If any change is to be made in the permanent cadre strength, it must be made on the principles enunciated by the Deputy Director as regards the non-filling up of vacancies which I have mentioned in this Report. In making such variations, emphasis should be more on local conditions prevailing in a Workshop rather than its effect upon productivity targets. In filling up vacancies in future, railway administrations should not make a fetish of the man-power ratio. They must bear in mind that the ratio is an all-India generalisation, not necessarily intended to be applied to each and every workshop irrespective of local conditions. In working the ratio, the administrations must have regard to the local conditions prevailing and the promotional prospects of workmen. On the whole, it is not proper to arrest or retard a promotion due to a worker solely on the ground that the all-India man-power ratio will be affected. Having regard to the fact that the man-power ratio has been considerably reduced on an all-India basis, the administrations can, with justification, permit suitable variations in regard to individual workshops. (*vide* paras 3.19 and 3.23).
- (2) In determining the cadre strength of various categories of staff in a particular railway workshop, if the railway administration comes to the conclusion that the average team of three workers in a shop requires more than or less than one semi-skilled or unskilled worker, it should not be fettered in fixing a proper ratio in respect of these categories by reason of the fact that it will not conform to the all-India ratio of 3 : 1 : 1. (*vide* para 3.24).
- (3) The principles which justify offloading or private purchase of items should be reiterated by the Board and the workshop administrations should be impressed that offloading or private purchase should not take place in violation of those principles. (*vide* para 3.25).
- (4) The workshop administrations must be impressed about the desirability of holding trade tests at regular intervals so that vacancies may not remain unfilled on the ground that qualified workmen are not available for promotion (*vide* para 3.27).
- (5) Directions should be reiterated to the workshop administrations that BTMs should be regarded as trainee workers, that they should be promoted if found fit as skilled workers after their period of training is over, that they should not form part of incentive cadres or leave reserve cadres and that they should not be used as skilled workers without paying them as such (*vide* para 3.29).
- (6) If an unskilled or semi-skilled worker/BTM has stagnated in the scale for more than twelve years even though he has otherwise qualified himself for promotion, then, he should be granted one increment at interval of every three years thereafter (*vide* para 3.30).
- (7) The order in regard to the pooling of the unskilled workers should be amended so as to remove the proviso that the ratio of 3 : 1 : 1 should be maintained. (*vide* para 3.31).
- (8) Recruitment of Trade Apprentices does not require to be banned permanently. (*vide* para 3.32).

- (9) In those cases where Mistries supervise the work of highly skilled grade I workman or workmen, they should be in the higher grade of Rs. 175-240 instead of Rs. 150-240. (*vide* para 3.35).
- (10) Posts of Mistries holding independent charge of a section should be upgraded to those of Chargemen C. (*vide* para 3.36).
- (11) The demand of the Federation in regard to re-classification of Chargemen D Grade & Chargehands designated as Mistries is rejected. (*vide* para 3.38).
- (12) The demand of the Federation that the quota at present allotted to skilled workers for promotion as Chargemen C and for recruitment as Apprentices-Mechanic should be increased is rejected. (*vide* para 3.39).
- (13) In some workshops, percentage distribution of grades of Chargemen, as agreed to by the Board and the Federation, is not being maintained. Immediate steps should be taken to implement the percentage distribution in those workshops so as to conform to the agreed percentage (*vide* para 3.41).
- (14) The demand of the Federation that the staff of the PCO should be excluded in determining the percentage distribution of Chargemen on the agreed basis in all workshops is rejected. (*vide* para 3.42).
- (15) The demand of the Federation for an increase in percentage distribution of the various grades of Chargemen is rejected. (*vide* paras 3.49 and 3.50).
- (16) The demand of the Federation that the percentage distribution of the two grades of Foremen A and B should be in the ratio of 40 : 60 is rejected. (*vide* para 3.51).
- (17) The demand of the Federation in regard to grant of a special pay of Rs. 150/- per month to Foremen A is granted. (*vide* para 3.55).
- (18) As regards the demand of the Federation to grant a special pay of Rs. 100/- per month to Foremen B, it is decided that, instead of such special pay, Foremen B should be given the higher grade of Rs. 450-575. (*vide* para 3.55).
- (19) Percentage distribution of the grades of Chargemen A, B and C in the Electrical and S & T Workshops should be in conformity with that agreed to by the Board and the Federation in the case of Mechanical Workshops. (*vide* paras 3.56 & 3.58).
- (20) Decisions given in this Report in regard to the upgradation of the posts of Mistries exercising supervision over highly skilled grade I workmen to Rs. 170-250 scale and of Mistries in independent charge of sections to those of Chargemen C grade should also be applied to Electrical Workshops and Signal & Telecommunication Workshops. (*vide* paras 3.56 & 3.58).
- (21) Decisions given in regard to grant of special pay of Rs. 150/- per month to Foremen A and upgradation of Foremen B to Rs. 450-575 scale in Mechanical Workshops should also be made applicable to Foremen working in Electrical and Signal & Telecommunication Workshops. (*vide* paras 3.56 and 3.58).
- (22) Workmen and sub-supervisors in Power Houses are not entitled to the benefits of decisions made herein. (*vide* para 3.57).
- (23) The demand of the Federation that the avenues of promotion for posts of Asstt. Mechanical Engineer should be further widened is rejected. (*vide* para 3.60).

TERM OF REFERENCE NO. 3—PAYMENT OF WAGES TO CASUAL LABOUR

Preliminary

4.1. The Third Term of Reference is as follows :
 "Casual labour on the Railway should be paid wages at the rate of 1/30th of the minimum of the time-scale plus Dearness Allowance applicable to the corresponding categories of staff in regular employment in the Railways."

4.2. From the above Term, it is clear that the sole demand of the Federation is in regard to the rate at which casual labour is to be paid. The demand is that all casual labour should be paid at a uniform rate related to the rate at which regular labour on railways is being paid.

4.3. In order to understand the above demand and to appreciate the reasons on which it is based, it is necessary to state, at first, the rate or rates at which casual labour is being paid at present. In order to do this, it is necessary to appreciate the definition of "casual labour" and to understand the various categories into which casual labour is divided for determining the rates at which it is to be remunerated.

4.4. In Chapter XXV headed "Casual Labour" of the India Railway Establishment Manual (hereinafter called the Manual), "Casual labour" is defined in clause (a) of paragraph 2501 as "labour whose employment is seasonal, intermittent, sporadic or extends over short periods." Clause (b) of the same paragraph says that casual labour on railways should be employed only in the types of cases mentioned in the three sub-clauses thereof. Sub-clause (i) mentions staff paid from contingencies except those retained for more than six months continuously. Sub-clause (ii) mentions labour on projects, irrespective of duration. Sub-clause (iii) mentions seasonal labour which is sanctioned for specific works of less than six months' duration. Sub-clause (iv) contains a negative provision and forbids casual labourers from being employed as trolley-men on open lines. In regard to the staff mentioned in sub-clause (i), it is provided that "such of those persons who continue to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of six months of continuous employment." In regard to the staff mentioned in sub-clause (iii), the same provision is to be found though that provision is worded in a different manner. The sub-clause says that if seasonal labour "is shifted from one work to another of the same type, e.g. relaying and the total continuous period of such work at any one time is more than six months' duration, they should be treated as temporary after the expiry of six months of continuous employment. For the purpose of determining the eligibility of labour to be treated as temporary, the

criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers." Five Notes are appended after sub-clause (iii). Note 1 explains what a project is. It says that a project should be taken as construction of new lines, major bridges, restoration of dismantled lines and other major important open line works like doubling, widening of tunnels, etc., which are completed during a definite time limit. It further says that "The General Manager/Heads of Departments concerned, in consultation with F.A. & C.A.O. will decide whether a particular open line work should be treated as a project or not." The Note further goes on to state that the test to be applied for deciding whether such open line work should be treated as a 'project' or not "will be whether the work is required for the day-to-day running of the railway, as distinct from the provision of large scale additional facilities to improve the carrying capacity of the railway." Note 3 prohibits labour employed against regular vacancies, whether permanent or temporary, from being employed on casual labour terms. It further goes on to state that casual labour should not be employed for the work on constructions of wagons and similar other work of a regular nature. Note 4 prohibits casual labour from being deliberately discharged "with a view to causing an artificial break in their service and thus prevent their attaining the temporary status." Note 2 provides that once an individual labourer acquires a temporary status after fulfilling the conditions indicated in sub-clause (i) or (ii) of clause (b), he retains that status so long as he is in continuous employment on railways. In other words, even if such a labourer is transferred by the administration to work of a different nature, he does not lose his temporary status. Note 5 says that the expression "same type of work" used in sub-clauses (i) and (iii) should not be too rigidly interpreted "so as to cause undue suffering to casual labour by way of break in service because of a slight change in the type of work in the same unit" and, thereafter, it mentions various instances of work which are to be regarded as the same type of work within the meaning of that expression.

4.5. Paragraph 2502 of the Manual deals with wages to be paid to casual labour. Clause (a) thereof says that, except in the case of emergencies like breaches or accidents etc., where wages can be paid at a higher rate, depending on availability of labour and other circumstances, casual labour employed on railways falls into either of two categories. The two categories are (1) labour governed by the Minimum Wages Act (Central) (hereinafter called the MW Act), which labour hereinafter is described as scheduled casual labour, and (2) labour not governed by the MW Act, hereinafter described as non-scheduled casual

labour, Clause (b) says that the scheduled casual labour is to be remunerated in accordance with the provisions of the MW Act. Clause (c) states that non-scheduled labour is to be remunerated "on a daily rate ascertained from the locality or the State Government concerned where necessary." The clause further states that, if such rates are not available, the labour is "remunerated at 1/30th of the minimum of the authorised scale of pay plus dearness allowance applicable to corresponding categories of railway staff." Clause (e) confers power to fix wages with reference to the daily rates derived from the minimum of the appropriate authorised scale plus dearness allowance (hereinafter called as scale rate), in cases where the local market rate is not available, on the Heads of Departments concerned in consultation with F.A. & C.A.O. Clause (c) further states that where the rate of wages arrived at in either manner is lower than the minimum wage fixed by the State Government concerned for comparable scheduled employment, the rate of wages shall be the minimum wage fixed by the State Government. Clause (d) provides that special rates may be sanctioned by the General Manager in consultation with F.A. & C.A.O. for specialised labour for whom local market rates are not available and it is not possible to recruit them at the daily rate derived from the scale rate. Instances of specialised labour are mentioned as "Earth-moving plant drivers, mechanics, drivers, riveters, dollymen, beaters, bridge serangs, bridge khalasis etc." Two Notes are appended to paragraph 2502. Note 1 states that a review should be undertaken every year after ascertaining the rates from the local authorities or the State Government concerned "in order that the rates fixed by the local authorities from time to time are not lost sight of." Note 2 states that, with effect from 1st July 1965, minimum daily wages of casual labour employed on railways, whether in scheduled or non-scheduled employment, should be fixed at Rs. 1.50 (rupee one and fifty paise). The Federation has averred, in its Statement of Demands, that the General Managers have further been empowered to fix rates upto 33½ per cent over the rates fixed under the MW Act or those fixed by the local authorities in particular localities, if the circumstances warrant such fixation to be made. This averment has not been denied by the Board.

4.6. It appears that the above provisions in the Manual embody and consolidate instructions issued by the Board from time to time for implementation of the recommendation of the Second Pay Commission regarding casual labour and also embody modifications effected by the Board, keeping in view the changes ordered by it. These consolidated instructions were issued by the Board in its letter No. E. NG60CL/13 dated 22nd August, 1962 addressed to all Indian Railways and amended from time to time by their letters of the same number dated 1st September 1962, 21st September, 1962 and 25th June 1963. The letter dated 22nd August, 1962 together with all the amending letters appears as Annexure I to the Board's Reply.

Different Categories of Casual Labour

4.7. From the above summary, it is thus evident that, for the purpose of remunerating casual labour, it has been divided by the Board into the following

categories : (1) casual labour recruited in emergencies, and (2) casual labour recruited under ordinary circumstances. Where casual labour is recruited in emergent circumstances, wages can be paid at a higher rate, depending on availability of labour and other circumstances. Where labour is recruited under ordinary circumstances, for the purpose of remuneration, it is further sub-divided into the following three sub-categories, (1) scheduled casual labour, (2) non-scheduled casual labour, and (3) specialised labour. Any one of these sub-categories may fall into any of the following heads : (1) project labour, and (2) non-project labour. The remuneration of a casual labourer will depend on whether he belongs to one or the other of the sub-categories mentioned above. A scheduled casual labourer, whether project or non-project, will be remunerated in accordance with the provisions of the MW Act. A non-scheduled casual labourer, whether project or non-project, will be remunerated on a daily rate. That rate is to be ascertained from the locality or the State Government concerned. Such a rate will be called local rate hereafter. If such a rate is not available, then, the labourer is to be remunerated according to the scale rate. However, if either the local rate or the scale rate is lower than the minimum wage fixed by the State Government concerned for a comparable scheduled employment, then, the casual labourer is to be remunerated in accordance with the minimum wage fixed by the State Government. If the casual labourer belongs to a specialised category, then, he is to be remunerated at a special rate sanctioned by the General Manager in consultation with F.A. & C.A.O. if the local market rate is not available and it is not possible to recruit him at the scale rate,

4.8. From the above analysis, it is clear that, except in the case of a casual labourer recruited in emergent times or a casual labourer of the specialised variety, if the casual labourer is a scheduled labourer, he is to be remunerated in accordance with the provisions of the MW Act and if he is a non-scheduled casual labourer, he is to be remunerated according to the local rate and if such rate is not available, then, according to the scale rate. However, the non-scheduled worker has also the advantage of the minimum wage fixed by the State Government concerned under the provisions of the MW Act, if his remuneration determined in any of the above two ways happens to be less than the minimum wage fixed by the State Government under the MW Act for a comparable scheduled labourer. From the same analysis, it is also equally clear that, whereas the remuneration of a non-project casual labourer will cease to be governed by the above rules and will instead be regulated by the scale of pay applicable to a regular railway worker, if such a non-project labourer renders service for a continuous period of six months in the same type of work, that of a project labourer will continue to be governed by the above rules even though he renders continuous service for six months and more. Moreover, a non-project casual labourer who renders service for a continuous period of six months is raised to the status of a temporary railway workman after the expiry of six months of continuous employment, whereas a project labourer cannot attain

that status, whatever be the period for which he renders continuous service.

4.9. If the demand of the Federation is granted, then, all casual labourers, to whichever of the above categories they may belong, will get the scale rate. The effect of the grant of this demand will be (1) casual labourers recruited in times of emergency will get wages only at the scale rate and will not be eligible for a higher rate, (2) specialised labourers will also get remunerated under the scale rate and will not be eligible for a higher rate, (3) scheduled casual labourers can avail themselves of the minimum wage under the MW Act only if the scale rate happens to be less than the minimum wage fixed by the appropriate authority, and (4) non-scheduled casual labourers will not get the benefit of the minimum wage fixed by the State Government for a comparable scheduled labourer under the MW Act if their wages at the scale rate happen to be less than the minimum.

4.10. Before proceeding further, it may be stated that all casual labourers are railway servants within the meaning of the Indian Railways Act, 1890 and that, whereas the scheduled casual labourers are governed by the provisions of the MW Act and the rules made thereunder, the non-scheduled casual labourers are governed by the Hours of Employment Regulations (hereinafter called HER). One effect of the latter variation is that, whereas the hours of work of the scheduled casual labourers are 48 per week, those of the non-scheduled casual labourers are 54 per week and whereas the scheduled casual labourers have a right to be paid for over-time work at twice their rate of pay, the non-scheduled casual labourers are paid only one and a half times their rate of pay for over-time work.

4.11. According to the Statement of Demands, casual labourers are employed on the following jobs : (1) road construction, (2) building operations, (3) stone breaking, (4) stone crushing, (5) loading and unloading in transshipment yards, (6) work connected with permanent way, and (7) a variety of other jobs. It may be noticed that the employments under the first four heads are those which are mentioned as Items nos. 7 and 8 in the Schedule, Part I of the MW Act and, as such, subject to a consideration of the argument of Mr. Kulkarni that the MW Act does not apply to railways, they fall within the purview of the MW Act. In addition to the above employments, reference was made during the course of arguments to such seasonal employments in hot weather as water serving, water sprinkling, etc.

4.12. Casual labourers are normally recruited from the nearest available local sources, are not liable to transfer and the conditions applicable to permanent or temporary staff do not apply to them.

Rival contentions of parties

4.13. From the above summary, it is clear that the main controversy between the parties is whether casual labour should be paid at the local rate, or at the scale rate. The contention of Mr. Kulkarni is that the job done by the casual labourer is essentially of the same type as that done by the regular railway worker and that the difference in the wage rates paid to the two sets of workers offends the principle of

equal pay for the same work. He says that the main difference between a casual worker and a regular worker is that the employment of the former is of casual nature and liable to be terminated as soon as the job, for the performance of which he is employed, terminates and that though this difference may merit a difference in grant or non-grant of fringe benefits, there is no reason for remunerating the same kind of work differently. Alternatively, Mr. Kulkarni contends that even if there is any justification for treating the two kinds of labour differently in the matter of payment of wages, the present rules in regard thereto are such as to make an invidious distinction between different kinds of casual labourers and that the authority or authorities empowered to determine the local rate lack precision and the machinery which has been set up for determining the same is liable to such abuses that the practice of paying casual labourers in terms of the local rate requires to be abolished altogether. He further contends that the system which has been devised is capable of being abused and that several of the rules mentioned in the Manual are broken to the prejudice of casual labourers to such an extent that it would be more conducive to justice if a uniform wage is given to casual labourers of all categories, *i.e.* the scale rate. On the other hand, Mr. Mahadevan's contention is that the scheme for payment to casual labour is fundamentally based on the recommendations of the Pay Commission and is designed to do justice between various categories of casual labourers. He contends that the scheme taken as a whole is satisfactory and that it embodies rules which have been designed to give casual labour in course of time the status of regular railway labour.

Concepts of casual labour

4.14. Before undertaking a detailed discussion of the main controversy between the parties, it will be convenient to mention certain complaints made by Mr. Kulkarni which have relevance to the concept of casual labour and its application in the day-to-day railway administration. Mr. Kulkarni says that casual labour is being employed against regular vacancies and for performance of duties which are related to the carrying on of the day-to-day administration of railways. Secondly, he complains that, with a view to preventing certain types of casual labour on the verge of completing the requisite period of employment, from acquiring the status of temporary service, artificial breaks are brought about, in contravention of the provisions contained in the Manual, in the continuity of their service and that the machinery of issuing employment cards to casual labour which is devised by mutual consent for preventing such an abuse is not being put into practice though the agreement in regard to it was reached as far back as 1964. In my opinion, there is some justification for these complaints. There is reasonable ground for believing that casual labour is being employed against regular vacancies. One glaring instance of this is to be found in the admission made by the Board in a submission made by it to the Railway Accidents Inquiry Committee, 1968, a quotation from which is extracted in paragraph 379 of its Report Part I. It appears from that extract that the Board had passed orders for freezing the strength of gangmen. In rendering an

explanation to the effect that such orders had no adverse effect on track maintenance, the Board admits that casual labour was being employed whenever conditions required greater attention to tracks. In my opinion, employment of casual labour under such circumstances violates the principles enunciated by the Board in the Manual in regard to casual labour. In Note No. 3 referred to above, it has been clearly stated that casual labour is not to be employed against regular vacancies, whether permanent or temporary. There is also reasonable ground for believing that casual labour is employed for purposes which are not of a casual nature. For example, there is ground for believing that casual labour is employed in permanent way gangs and in loading, unloading and transshipment operations in transshipment yards and stores depots. There is also reasonable ground for believing that casual labour is employed in loco sheds for loading coal in engine tenders. There cannot be any doubt that all these operations cannot come within the purview of the concept of casual labour and, therefore, cannot be designated as such. None of the above operations appears to be of an intermittent, seasonal or sporadic nature, nor can any of them be said to be undertaken for short periods. Mr. Mahadevan does not attempt to justify the above state of affairs. There is also reasonable ground for believing that there is justification for complaint in regard to artificial breaks. The averment to that effect in the Statement of Demands has not been denied by the Board in its Reply. The Board has also not denied in its Reply the averment in the Statement of Demands that, in order to check the above evil, an agreement was arrived at as far back as 1964. A card in which details of employment were to be recorded was to be given to each casual labourer and that, till the date of the Statement of Demands, such cards were not distributed to most casual labourers. In regard to this latter arrangement, it is interesting to note that the issuance of such cards is compulsory under the Model Standing Orders given in Schedule I of the Industrial Employment (Standing Orders) Central Rules, 1946. Mr. Mahadevan also does not attempt to justify this omission. Though I am not concerned with the above aspects directly inasmuch as the point which I am called upon to decide is one of the rate of wages, I have no doubt whatsoever that, if the above affairs persist, they would themselves be good grounds, even if payment at the local rate is ideologically justified, for not giving effect to such ideology and they themselves can be good grounds for deciding that the scale rate should be paid to casual labour. However, for the present, I have not thought it proper to base a decision on the above grounds, because, in my opinion, the situation can still be rectified by the Board by issuing proper instructions or passing proper orders thereon. In my opinion, if, in spite of such a chance being given, the situation does not improve, then, it may itself be a good ground for deciding that casual labour should be paid at the scale rate, and for not giving effect to the principle which, as I shall presently show, is otherwise sound, that casual labour should be initially paid the local rate. Under the circumstances, I hold that, for the present, the Board should issue immediate directives in regard to the above matters so that the rules regarding the definition of "casual labour" are not contravened and so

that they may be put into practice in their true spirit. The Board should also devise a proper machinery to see that any breaches of the above rules which are committed are set right immediately and must also see that employment cards are issued to casual labourers so that evidence regarding continuity of service is not destroyed.

Is payment of local rate justified

4.15. The first contention of Mr. Kulkarni is fundamental and raises a question of great importance. Mr. Kulkarni is right in contending that the work of the same kind must ordinarily be paid for at the same rate. However, in applying this principle, it is not unjust to bear in mind the circumstances under which casual labour comes to be employed and the conditions which govern its employment. Whereas a regular worker, whether permanent or temporary, agrees to render service on a long term basis, has a greater stake in his service and undertakes firmer obligations, the service undertaken by casual labour is lacking in all these qualities. Moreover, whereas regular railway servants are employed to carry on the day-to-day railway work, a casual labourer is employed to do a job which arises sporadically, intermittently, seasonally or for short periods. Mr. Kulkarni is right in contending that the latter factors may be good grounds for not granting casual labour fringe benefits which regular service is granted, but I cannot agree with him that those factors also cannot be good grounds for granting different grades of wages to the two kinds of labour. Moreover, casual labour is not amenable to the same discipline which regular labour is. This circumstance is equally relevant and can have its effect on the question of wages. Whereas regular labour is recruited after proper tests and by the authorities who are competent to decide on such tests, casual labour is employed on the spot by officers who may not necessarily be well-equipped to determine the capacity of workers to render regular railway service. Another relevant factor is that casual labour is not bound to serve railways to finish the job for which railways employ it. Still another circumstance is that casual labour is drawn mainly from a local source and has a local market for which there is a prevalent local rate. If the local rate is disturbed, then, it has its effect both on the casual worker and the railway administration. If the scale rate is more than the local rate, then, the payment of the latter rate will affect other employers of casual labour in the locality, specially the agriculturists, who may not be in a position to bear an additional burden. On the other hand, if the scale rate is lower than the local rate, then, the railway administration may find difficulty in recruiting casual labour or requisite number thereof and its work may suffer. One infirmity in the present demand is that it assumes that the local rate always is or will be less than the scale rate. This assumption does not appear to be correct. I understand that there are areas in some parts of India where the local rate is more than the scale rate and casual labour is being paid at a rate higher than the scale rate. The scheme framed by the Board has taken this factor into account by providing payment of wages at a rate higher than the scale rate not only in the case of emergent and specialised casual labour

but even in the case of ordinary casual labour. If the railway administration is liable to make a higher payment in the above circumstances, it is unjust to call upon it to pay more in areas where it can avail itself of casual labour at a lower rate. It is true that the railway is a public concern, is an organized industry, is conducted by a welfare State and that, therefore, it must eschew exploitation of labour. However, that does not mean that the railway must, in every case, pay the same rate where it can employ casual labour at a lower rate which is not an exploitation rate. Exploitation of labour, if any, can be prevented by calling upon railways to pay the minimum wage fixed by the appropriate Government for comparable scheduled employment. In fact, this has been done by railways as already stated. Another factor which is relevant is that whereas the regular railway worker cannot supplement his earning by employing himself in any other avocation without the permission of his superior officer, a casual labourer is at liberty to do so at all times. Under the circumstances, in my opinion, it is not correct to contend that casual labour should always be remunerated in the same manner as regular railway labour. It may be noticed that the Federation does not challenge the institution of casual labour. It does not contend that such an institution deserves to be totally abolished. Both the Pay Commission and the National Labour Commission have expressed opinion that, having regard to circumstances prevailing in this country, the institution of casual labour must remain, at least in the foreseeable future. It is true that, when casual labour is employed for a sufficiently long period of time, an attempt may and should be made to bring its remuneration nearer that of regular labour or even to de-casualise it so as to put it on a par with temporary labour. In fact, the Board has made an attempt in the latter direction, in regard to some of the categories of casual labour. This is a healthy trend and deserves encouragement and amplification. But this aspect of the matter is entirely a different question. I propose to consider this aspect when dealing with the contention of Mr. Kulkarni that an invidious distinction is being made in this regard by the Board and that the rules which have been framed on the subject have been deliberately so framed with a view to preventing casual labour from acquiring the status of temporary employees. On the whole, after balancing the pros and cons of the controversy, I have come to the conclusion that the contention of the Federation that casual labour should be treated, in the matter of payment of wages, on a par with the regular labour should not be accepted.

Machinery for determination of local rates

4.16. Mr. Kulkarni contends that, even if his above principle is not accepted, the machinery which has been at present devised by the Board is not conducive to payment of current local rate. He contends that the rate at which casual labour is being paid is not properly ascertained and that, in any case, it is one which has been ascertained at an anterior point of time, so that casual labour is not at any time being paid at a real current local rate. He further contends that no precise authorities have been prescribed for ascertaining the local rate and

that the authorities at present employed for doing so do not include organized industries which employ casual labour in the localities concerned. He further contends that, if in any locality there is the prevalence of more than one local rate, then, usually the lowest of such rates is being paid to casual labour. He further contends that, in any case, the local rates are not reviewed from time to time and that the result is that the rate at which casual labour is being paid does not bear any real relation to the actually prevailing local rate. Mr. Kulkarni further complains that there have been several instances where even though the local rates were obtained and sent to higher authorities for sanction, the same have not been sanctioned by railway administrations. Mr. Mahadevan, on the other hand, contends that the local rate is mainly ascertained from the District Magistrate. However, Mr. Kulkarni says that the District Magistrate himself has no personal knowledge of the prevailing local rate and that he ascertains such a rate from his subordinate officers. He further contends that the local rate, even after such ascertainment, has to be submitted for sanction to the railway Accounts Officer and the result is that the local rate which is sanctioned and paid is not necessarily the same rate which is prevailing at the time when the service is rendered. Because of these rival contentions and especially because of the paucity of materials on the subject, I decided on the 18th July 1970, after hearing arguments on both sides, that liberty should be given to the parties to adduce such evidence as they may choose on the topics mentioned in my Order of the same date. The parties decided to avail themselves of this opportunity. I, therefore, granted them time till 17th September, 1970 to produce their documentary evidence and to give the names of their witnesses.

Additional evidence led by parties

4.17. Both the parties led oral and documentary evidence in support of their rival contentions in regard to queries formulated by me by the Order dated 18th July, 1970. Before this was done, the Railway Board submitted a statement replying to each of the queries on the basis of the position obtaining on Western and Eastern Railways. In my opinion, that reply and the oral and documentary evidence justify the following conclusions:

- (1) Broadly speaking, Western Railway obtains local rates from the local bodies, like P.W.D. Executive Engineers, Municipalities, Village Panchayats, etc., and Eastern Railway obtains local rates from District Magistrates, P.W.D. and such other departments.
- (2) As regards the rates at which payments are made to casual labour, the practice is not uniform. In some cases, the rates prevailing in the localities from which information is ascertained are paid. In some other cases, the rates from the localities are tabulated and, on the basis of such rates, a rate is fixed at which payment is to be made. In the first case, if there are different rates

prevailing in different localities, then, the lowest of the rates is paid to casual labour.

- (3) The instructions are that the machinery for collection of local rates should be set in motion in January of each year, so that the rates prevailing in different localities are ascertained in the subsequent three months. However, these instructions are not followed in all cases. The evidence discloses that, on Western Railway, such machinery has not been set in motion in one division since 1967 and, in another division, since 1968. The rates so ascertained become effective from the 1st of April of the same year. However, it appears that the above months and dates probably do not apply to all such cases. It is probable that different dates are fixed in different months for the ascertainment of the local rates, but, one thing is certain that, whatever the month or months in which the rates are ascertained, the ascertained rates are made effective from a date later than the dates for which they are ascertained and they are made, in any case, effective for a period of one year. In some cases, the rates do not become effective from the date on which the instructions are that they should become effective, but, they are made effective from the date on which the rate is actually communicated. On the above two railways themselves, it appears that, in some cases, the rates ascertained in the first three months of a year were made effective only in August or November of that year. Two results follow from the above state of affairs. One is that the ascertained local rate is not necessarily the rate which is prevailing at the time when casual labour is paid even when the instructions are respected in full. There is always a time-lag of either three or two or one month between the date of the ascertainment of the local rate and the date on which it is paid. In those cases where the instructions are not respected, the time-lag is still much more. The time-lag in such cases varies from six to eight months. Having regard to the fact that such rates would be effective for one whole year, it is quite clear that the old rates prevail at least for 15 to 20 months and, in the divisions already mentioned on Eastern Railway, the old rates have continued for about three in one case and two years in another. From the above materials, it is quite clear that casual labour is never paid at the local rate prevailing on the date on which service is rendered, but it is always paid at a rate prevailing at some anterior date, and the time-lag between the two dates, may vary from one month to several years.
- (4) From the answer to query No. 8, it appears that the disparity between the local rate actually paid to casual labour and the minimum of the time scale plus dearness allowance payable to the corresponding railway servants on Western Railway in

the case of skilled workers varies from Rs. 0.93 to 3.42; semi-skilled worker from Rs. 1.36 to 1.86 and unskilled worker from Rs. 1.70 to 1.95 and in the case of khalasi, from Rs. 1.95 to 2.20. The corresponding figures for the skilled, semi-skilled and unskilled workers on Eastern Railway are Rs. 1.33 to 2.68, Rs. 0.86 to 1.61 and Rs. 0.90 to 2.20 respectively.

- (5) As regards artificial breaks in the employment of casual labour, some points emerge from the evidence which require to be mentioned. As regards revenue works, the works automatically terminate on the 31st of March every year, so that, there is an automatic cessation on that particular date and until fresh sanction is obtained, Mr. Kulkarni contends, that there would be an automatic break in the continuity of service inasmuch as casual labour would be discharged and paid within forty-eight hours after that date. This discloses that muster rolls for casual labour are prepared from 21st to 20th, and therefore Mr. Kulkarni contends, that having regard to the fact that fresh sanction would be required from the 1st of April every year, no muster rolls will be maintained from 21st of March every year. Thus, the probability of continuity of such service being broken on account of the aforesaid fact cannot be overruled. As regards non-project or maintenance work, the evidence discloses that applications, which are known as ELAs, have got to be made by the officer concerned and sanction has got to be obtained. These applications are made and sanctioned for a period of four months. The evidence discloses that a fixed amount is sanctioned for each such type of work, and if the same cannot be finished within the time limit for which sanction is accorded, then, a fresh ELA has got to be made. Mr. Kulkarni contends that there is a time-lag between the date of expiry of the previous sanction and the accord of the fresh sanction, the result being that during the interval, casual labour gets discharged, so that even if the same work is continued, there is a break in the continuity of service of casual labour. Murti explains that this is not so. He says that even if sanction is not accorded in time, the work is continued in anticipation of the sanction and that, as a general rule, it is not considered advisable to discharge casual labour without completing the work as it causes disruption and other problems for completing the work. Though Murti says that ELAs are not necessarily sanctioned only for a period of four months, having regard to his answer that he does not remember to have sanctioned any ELA for more than four months, there is reason to believe that such Extra Labour Applications are sanctioned only for a period of four months. In such cases, there is a likelihood of casual labour being discharged if, for some reason, the administrative sanction is not accorded soon after

the previous sanction has lapsed. There is one more fact which has been brought on record by the Federation. An extract from the Minutes of the proceedings of a meeting of the Heads of Departments held on 14-11-1968 on Central Railway has been produced, from which it appears that the FA & CAO had complained that a large number of casual labour was employed continuously for a long period and the extension asked for seldom related to their dates of appointment. It was also noticed that casual labour recruited for specific works were switched over to new works on completion of the works for which they were actually recruited, with the result that the staff were on the rolls beyond six months. The Minutes say that the GM reminded the Heads of Departments about his earlier instructions that casual labour should not be kept continuously beyond four months without an administrative officer's sanction. The Minutes further record that if they were allowed to work beyond four months without such sanction, the District Officer would be personally held responsible.

Precise Determination of local rates

4.18. From the aforesaid discussion, it is quite clear that casual labour does not come to be paid necessarily at the local rate prevailing on the date on which service is rendered by it to railways. It is also quite clear that, in some cases, the rate at which it comes to be paid is an artificial rate — not the rate which had been previously ascertained but a rate which is extracted from a conglomeration of various rates prevailing in some divisions. It is also quite clear that the position is such that casual labour can never come to be paid at the rate which is prevailing in the locality from which it is drawn; a time-lag is inherent in the situation itself. From the above facts, Mr. Kulkarni contends that even if the contention of the Railway Board is correct that, for the reasons already stated, the ideal position would be to pay the casual labour at the rate prevailing in the locality, having regard to the fact that casual labour can never be so paid, the policy must be rejected on the ground of its impracticability apart from the administrative difficulties as a result of which there is a considerable time-lag between the date of ascertainment of casual labour rate and the date on which it comes to be paid. I have given my anxious consideration to this argument of Mr. Kulkarni. There is no doubt whatsoever that the argument is weighty and deserves careful consideration. However, at the same time, in my opinion, in giving effect to the above policy, one has got to bear in mind that in a large public organization like that of the railways, it is not possible to devise a method by which casual labour can be paid at the same rate which is prevailing in the locality on the date on which service is rendered. Having regard to the fact that the local rate has to be ascertained from other sources, some time-lag has necessarily to be tolerated, and if the time-lag is reasonable, the policy need not be given up only on that account.

It is true that in some cases there can be violent fluctuations in local rates, after they have been ascertained but I have no materials on record to show that such violent fluctuations take place on a large scale. Therefore, in my opinion, the instructions which have been issued by the Railway Board that local rates should be ascertained annually is a reasonable instruction and if this instruction is properly carried out, then, though the actual local rate prevailing on a particular date cannot be guaranteed, the rate at which casual labour will be paid will be more or less nearer the mark of that which is prevailing in the locality at about the time when service is rendered or at an anterior date which is reasonable. In my opinion, the deficiencies which the oral and documentary evidence reveal in this case are deficiencies which are not irremediable nor is there any evidence to show that the deficiencies are prevailing on such a large scale that the present policy need be given up on the ground that it is impracticable and that there is such a discrepancy between the policy and its implementation that the former must be scrapped in the interests of the latter. However, in my opinion, in order that the policy may come to be achieved and may be worked out in its proper spirit, some additional measures require to be undertaken which would ensure that there is not much discrepancy between the local rate and the rate at which casual labour comes to be paid. In this connection, I have no doubt whatsoever that the contention of Mr. Kulkarni is not correct that the authorities from which the local rates are ascertained are not precisely indicated. In my opinion, the evidence discloses that the authorities are well-ascertained. However, there is no doubt whatsoever that the practice of extracting an artificial rate from the figures collected from the various authorities should be given up. In my opinion, definite instructions require to be issued to the effect that whatever figures are obtained from the localities concerned must be taken as the figures at which casual labour is to be paid in respect of the locality from which the figures have come and that the practice obtaining in one of the divisions of extracting an artificial rate by tabulating the various rates should not be followed. The evidence discloses that the figures obtained are forwarded to the Accounts Officer concerned and his concurrence is obtained. Mr. Kulkarni has no objection to such concurrence being obtained on procedural grounds, but, there is some reason to believe that the Accounts Officer exercises his discretion in accepting the figures given to him. In my opinion, this practice is unjustified. If an Accounts Officer were, in his discretion, to sanction a figure other than the one which has been correctly obtained after following the proper procedure, then, he would be sanctioning an artificial rate, and that is not in accordance with the spirit which underlies the policy which I have accepted. Under the circumstances, in my opinion, definite instructions should be issued that if the figures have been properly received by the authorities concerned, then, the figures should be accepted as correct and casual labour paid in accordance with the rate prevailing in the locality where it is recruited. For example, if a casual labourer is working within a municipal area and if the local municipality has given a rate for the locality, then,

the casual labourer should be paid at the rate given by the municipality and not at a rate which is prevailing even in a neighbouring locality. Further, though it is open to each Railway Administration to fix the date from which the ascertained rates should become effective, the time-lag between the date in respect of which the local rate is collected and it is made effective should never be more than three months. If, for some reasons, the time-lag is longer than 3 months, then, casual labour should be paid, for the period previous to such 3 months, at the new local rate if the same happens to be higher than the previous local rate. Moreover, in order to prevent injustice being done to casual labour, there should be a specific provision to the effect that if, for some reasons, the local rates are not or cannot be ascertained for a period of more than one and a half years, then, casual labour should be paid at the rate 1/30th of the minimum of the time scale plus dearness allowance payable to the corresponding railway worker. In my opinion, if these measures are adopted, then, the deficiencies which have been found in the working of the above system can, to a large extent, be either removed or mollified and the principle which, in my opinion, is the correct principle applicable to such cases can be given effect to.

Artificial breaks in Service

4.19. As regards artificial breaks, the evidence shows that though conscious breaks in service have not been caused, there are probabilities of artificial breaks being caused and, in order to remove such contingencies, the following changes need to be made and further instructions need to be issued. I have not been able to discover the reason why six months' period of time has been fixed as the time for earning the status of a temporary railway servant. Having regard to the fact that breaks are likely to be caused automatically inasmuch as ELAs are sanctioned for a period of four months only, in my opinion, the period of maximum service for earning the temporary status should be fixed at four months instead of six. Further definite instructions should be issued to the effect that, in case of casual labour engaged on works which automatically expire on 31st March, there should be no break in service provided that sanction for that work is given subsequently and casual labour, which is employed to finish the work is the same, with a further proviso that no casual labour should be prevented from working on a job so as to deprive him of earning the status of a temporary railway servant.

4.20. I may mention that if, at a later date, it is found that in spite of the changes effected in the fresh instructions which I have decided should be issued, for some reasons, administrative or otherwise, do not remove the deficiencies which have been brought out in the evidence, then, there would be a good case for granting the demand made by the Federation.

Discrimination between scheduled and non-scheduled casual labour

4.21. The alternative argument of Mr. Kulkarni is that, even if the scale rate is not to be paid to

every casual labourer, the existing scheme makes an invidious distinction between categories of casual labour in the matter of payment of wages and that such distinction is totally unjustified. The first and the most glaring distinction which the scheme makes is between scheduled and non-scheduled casual labour. Whereas scheduled labour is to be paid the minimum wage under the MW Act, non-scheduled labour is to be paid according to the local rate or the scale rate and if either of them is less than the minimum wage fixed by the State Government for comparable scheduled employment, non-scheduled labour is to be paid such minimum wage. Mr. Kulkarni assails this provision on two grounds. Firstly, he contends that the MW Act is not applicable to employees of the Central Government and that it is, in any case, not applicable to an organized industry like the railways. Secondly, he contends that, even if the MW Act is applicable, the provision that the scheduled labour should be paid at the minimum rate fixed by the MW Act is totally wrong inasmuch as that Act has not been enacted to freeze the wage of scheduled labour but it is enacted for the purpose of ensuring to it the minimum wage in case the market rate happens to be less than that minimum rate. I cannot agree with Mr. Kulkarni's contention that the MW Act does not apply to employees of the Central Government in general or railway employees in particular. Mr. Kulkarni's argument is two-fold. In the first instance he reads out some passages from the Statement of Objects and Reasons given at time of the introduction of the Bill to show that the MW Act is intended to control the wages of sweated labour only and, therefore, wages prevalent in unorganized industries. However, in doing so, Mr. Kulkarni omits to read paragraph 5 of that Statement which implies that the sponsor of the Bill intended that the provisions thereof should be made applicable also to employees of Central Government. Moreover, even if Mr. Kulkarni were correct that there was any such enunciation of policy in the Statement of Objects and Reasons, it is wrong, as is well-known, to construe the provisions of an Act with reference to the Statement of its Aims and Objects. An Act is to be construed by reference to the language used therein and not by reference to the Statement of its Objects and Reasons. Now, turning to the MW Act, it is clear that the scheme is that the Government is enjoined to fix a minimum wage in regard to those employments which are mentioned in Scheduled Part I. I am not concerned with all the items in that Schedule. As already indicated, the items which are relevant for our purposes are items Nos. 7, 8 and 17. Those items refer to employment on the construction or maintenance of roads or in building operations, employment in stone breaking or stone crushing and employment in maintenance of buildings. Mr. Kulkarni's contention is that the expression "employment" used in this part of the Schedule should be construed as industry and, therefore, the part should be taken to apply only to the industries which are engaged in construction or maintenance of roads or building operations or stone breaking or crushing or maintenance of buildings. He contends that this construction will take railways from out of the purview of those two items. I cannot agree.

It is true that the expression "employment" has not been defined in the Act but that expression has to be construed with reference to the definitions of the words "employer" and "employee" given in the Act. Those definitions are wide enough to include Government in general and railways in particular as employers and their servants as employees. There is one more indication in the Act in regard to this. The word "employer" has been defined, *inter alia*, as inclusive of a person "in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or, where no person or authority is appointed, the Heads of the Departments." This definition clearly indicates that the employees of any Government in India are also intended to be covered by the Act. In addition to this, the scheme of the first part of the Schedule leads to the conclusion that, in regard to items Nos. 7, 8 and 17, no qualification regarding industry has been introduced. If we compare the language used in those three items with the language used in the other items, it is quite clear that where the Legislature intends that the MW Act should be applicable to employment in particular industries, the relevant item has been qualified by reference to such industry to which it is intended to be restricted. The three items Nos. 7, 8 and 17 are not so qualified as the other items are. Under the circumstances, I have come to the conclusion that the above contention of Mr. Kulkarni must be negated. However, though this is so, in my opinion, Mr. Kulkarni is right in his second submission. Mr. Mahadevan takes shelter under the recommendations of the Pay Commission in regard to wages of Scheduled employees. Reliance is placed on paragraph 21 at page 522 of the Report of the Commission. Mr. Mahadevan contends that, having regard to those recommendations, the Board had no other alternative but to make provision as it had done, inasmuch as the Board could not have gone against the recommendations made by such a high-powered Commission. Mr. Mahadevan's explanation is not convincing for more than one reason. In the first instance, the Board has not thought it fit to implement a similar recommendation made by the Commission in regard to the wages of non-scheduled labour. In regard to the latter, the Commission also recommends that it should be paid at the minimum rate prescribed for corresponding scheduled employment. In spite of this recommendation, the orders of the Board in regard to wages of non-scheduled labour are different. As already stated, non-scheduled employees are to be paid wages either at the local rate or at the scale rate. They are to be paid the minimum wage only if any of these two wages happens to be less than the minimum prescribed for comparable scheduled employment. It is noteworthy that the Board has done all this in spite of the fact that the Commission buttressed its view against remunerating non-scheduled casual labour in the same way as regular railway labour by an additional argument which it does not advance for making the above recommendation in favour of scheduled labour, that additional argument being that, if non-scheduled casual labour were to be remunerated at the rate applicable to regular employ-

ment, the additional cost may be considerable perhaps of the order of rupees five crores per annum. Moreover, though Mr. Mahadevan is right in contending that, in the paragraph relied upon, the Commission does consider the question of payment of wages to casual labour, on a perusal of the paragraph as a whole, there is no doubt that the Commission does not appear to have considered the question on its own merits or de-merits. The Commission appears to have rest itself content by considering the question of payment of wages to scheduled labour entirely from the angle of minimum wages. After stating that, in its view, there is need for a consideration of the principle on which casual labour is remunerated, the Commission proceeds to state that no change is called for in regard to wages of scheduled employment which is regulated by the MW Act. Thus it is clear that the Commission has not considered the question of the initial fixation of wages of scheduled casual labour either in depth or in detail. The Commission appears to have assumed that the wage rate payable to scheduled casual labour is likely to be in all cases less than the minimum fixed by the appropriate authority under the MW Act. I have no materials to judge as to whether this assumption was correct when the Report was made, but, there cannot be any doubt that the assumption is not correct under the present conditions. There is another and, in my opinion, a fundamental objection to the recommendation made by the Commission. There cannot be any doubt that the MW Act is not intended to deprive the employers and employees of their right of fixing a rate for themselves contractually. The objective of the MW Act is not to take away that right which the parties have under the common law. The object of the MW Act is to prevent the contractual rate from falling below a minimum wage which may come to be fixed by the appropriate authority under the MW Act. If the provisions of the MW Act are used in the manner in which it is being done by the Board, it is clear that that which is prescribed as a minimum wage in the MW Act will be converted into a maximum wage. The MW Act is not enacted to prescribe a maximum wage. It has been enacted to forbid employers from paying wages less than those fixed under it and to penalise those who pay less than that minimum wage. It has not been enacted to prevent employees from getting more than that minimum wage if they can otherwise do so by agreement or other bargaining powers. Under the circumstances, in my opinion it will be abusing or making a wrong use of the provisions of the MW Act if the effect of any regulation fixing a wage is to prevent the employee from obtaining contractual rate if the same happens to be higher than the minimum, simply because the appropriate authority under the MW Act has chosen to fix a minimum wage. There is nothing in the MW Act which justifies such an approach to or interpretation of the MW Act. The present provision for payment of wages to scheduled employees also is bad because it discriminates between scheduled labour and non-scheduled labour in the matter of payment of wages. If non-scheduled labour is paid either at the local rate or the scale rate, there is no reason why the same benefit should not be granted to scheduled labour. During the pendency of the present proceedings,

the Board has recently passed certain orders in its letter No. E. NG67CL/42 dated 3/4th February 1970, in which it has given powers to the officers mentioned therein to grant to scheduled employees wages at a higher rate under the circumstances mentioned therein. I do not think that this modification removes in full the infirmities which I have noticed above in the matter of the treatment accorded to scheduled labour regarding payment of wages. Under the circumstances, I have come to the conclusion that the present provision made in the Manual for payment of wages to scheduled labour deserves to be scrapped and, instead a new provision introduced, which will bring scheduled labour on a par with non-scheduled labour in the matter of payment of wages. The provision must be that scheduled labour also must be paid either at the local rate or, if the same is not available, at the scale rate, subject to the further provision that, if either of these rates happens to be less than the minimum, then, scheduled labour shall be paid the minimum wage fixed by the appropriate authority. In the above contingency, the only difference between the terms of employment of the two kinds of labour will be that, whereas the latter provision is voluntary in regard to non-scheduled labour, it will be statutory in regard to scheduled labour, a breach of which will involve the employer to a penalty prescribed under the MW Act. However, my above decision is likely to place scheduled labour slightly on a better footing than non-scheduled labour. The disparity will arise because the scheduled labour is governed by Rules 23 and 24 of the Minimum Wages Rules (Central) and non-scheduled labour is governed by HER. Under the circumstances, whereas scheduled labour will get either of the above rate for rendering service for 48 hours per week, non-scheduled labour will get either of the two rates for rendering service for 54 hours per week. Secondly, whereas scheduled labour will get for overtime work twice the wage rate, non-scheduled labour will get only one and a half times the rate for such overtime. However, these differences arise because of a statutory provision in favour of scheduled labour. The same difference arises also in the case of permanent and temporary railway employees of the above two kinds. Mr. Mahadevan informs me that the above discrepancies have been got removed by getting an exemption under the relevant provisions of the MW Act in regard to permanent and temporary scheduled employees. If the Board intends to bring the two types of casual labour on an even keel, it is at liberty to take such steps as it may be advised for getting an exemption from the provisions of the MW Act in the case of scheduled casual labour also.

Differences between Project and non-Project labour

4.22. Another glaring difference in the matter of payment of wages is in regard to project casual labour and non-project casual labour. The non-project casual labour acquires the status of temporary service after it is rendered for a continuous period of six months, whereas project casual labour does not earn any such status whatever may be the period for which it renders service. Now this provision may be considered in two parts. Firstly, the non-project casual labour gets paid at the scale rate after the

expiration of six months' continuous service and will earn future increments in the relevant time-scale. Secondly, it gets all fringe benefits available to temporary railway employees. In the present Reference, I am not concerned with the aspect of future increments and fringe benefits. The point of importance, so far as the present Reference is concerned, is that the rate at which non-project casual labour gets paid after continuous service of six months is the scale rate whereas, under the same circumstances, project casual labour gets the local rate or the scale rate only if that local rate is not available. In an earlier part of this chapter, I have already indicated that though employment of casual labour in the initial stages of its requirements is inevitable, de-casualisation is a process which may well be attempted by an enlightened employer. I notice that such an attempt has been made by the Board in regard to non-project casual labour. The basis for the above provision for treating non-project casual labour employed for a continuous period of six months as temporary labour is to be found in such enlightenment. There can be room for difference of opinion as to the period which may be prescribed for raising casual labour to status of temporary employees. There is no uniformity on the subject in regard to employees of Central Government. From the Report of the Pay Commission, it appears that the period prescribed by the Defence Department for this purpose is one month and that prescribed by the Posts & Telegraphs Department is ordinarily one month and in no case, exceeds six months. There is no scientific basis for such a prescription which appears to be founded on the rule of thumb. However, as already stated, I am not concerned with that aspect of the matter which relates to the question of the status to be accorded to casual labour after continued service for a certain period of time. But that prescribed period is also relevant in the matter of payment of wages *simpliciter* apart from the question of status. Now, the question for consideration is whether there is any *raison de'etre* for treating project and non-project casual labour in the aforesaid manner and, if there is none, as to why they should not be treated in the same manner as regards payment of wages. In this regard, Mr. Kulkarni first contends that the definition of "project labour" contained in the Manual is self-contradictory. He contends that, whereas the definition given in clause (a) of paragraph 2501 is that casual labour is employed for a short period, in sub-clause (ii) of clause (b) thereof, it is stated that project labour may be of indefinite duration. I cannot agree that there is any such self-contradiction. The two parts of the above definition are in two different contexts. The definition contained in the first part is the main definition and says that casual labour has the characteristic of a short-term employment. The definition contained in the second part does not cut down the definition given in the first part. The definition in the second part is intended to provide circumstances in which labour of a particular kind acquires the status of temporary service. It is in this connection that, after having provided that non-project casual labour acquires that status after it is employed for a continuous period of six months, that it is stated that project casual labour will not acquire such a

status even though it is employed for any period of time. Therefore, the contrast is between non-project labour continuously employed for more than six months and project casual labour, whatever may be the period for which it is employed, and the contrast is made entirely for the purpose of emphasizing that in one case casual labour becomes temporary labour and in the other case it does not. Now, it is well-known that a project is always for a limited period of time. This is also quite clear from the provision contained in Note No. 1 in which it is stated that a project is a work which is to be finished within a definite period of time. Secondly, Mr. Kulkarni contends that the definition of "project" given in the Manual is not precise. I also cannot agree to this contention. In my opinion, the Manual does not attempt to give any definition of "project". However, it has enumerated what, in the opinion of the Board, are project works. In doing so, the Manual has given a discretion to the General Manager or the Heads of Departments to determine when a new open line work is project work or not. In the opinion of the Board, open line work may be either project work or non-project work and it has itself not given any definite decision on the subject. It has left to the discretion of the General Manager to take a decision on the subject but I cannot agree with Mr. Kulkarni that the choice which has been left to the General Manager is of an arbitrary nature. In my opinion, the latter part of Note No. 1 provides a definite guide-line to the officer concerned inasmuch as it indicates precisely as to when an open line work is to be regarded as project work and when not. It is indicated that the proper test is to discover as to whether the work has been undertaken to carry on the day-to-day administration of railway or whether it is a large-scale additional facility to increase its carrying capacity.

4.23. That takes me to the fundamental question as to whether there is really any differentia between project casual labour on the one hand and non-project casual labour on the other in the matter of payment of wages after the same is employed for a continuous period of six months. If the basis for the initial payment of the scale rate, *i.e.* the same rate as paid to temporary railway servants, is that casual labour ceases to be such or, in any case, the distinction between casual labour and temporary service gets blurred if it is rendered continuously for a certain period, then, I am unable to see any reason as to why project casual labour should be accorded a different treatment in regard to the same matter. The only reason which Mr. Mahadevan is able to adduce is that, whereas the number of persons employed for non-project purposes is comparatively small, the number employed for project purposes is large. In the first instance, I am not convinced about the validity of the above proposition but, even if it is so, I can hardly agree that it affords a sufficient reason for according a different treatment to the two kinds of casual labour. In this connection, it is important to notice that, in regard to the payment of retrenchment compensation, the Industrial Disputes Act does treat project casual labour almost on the same footing as ordinary labour. The only difference which the Act makes is that whereas ordinary labour

is to be paid retrenchment compensation if it is employed for 240 days in a year, the same is to be paid to project casual labour only if the project is continued beyond a period of two years. I have given my best consideration as to whether any similar distinction should or should not be made between the two kinds of labour in the matter of payment of wages. I have come to the conclusion that it should not be so made. The period of six months prescribed by the Board for ordinary non-project casual labour to acquire the status of temporary service is, as compared with at least two other Central Government Departments, more on the conservative side. The benefit of the above provision in regard to non-project casual labour extends to sporadic, intermittent and seasonal casual labour, all of which are being employed ordinarily for a shorter period than for which the project casual labour is employed. Under the circumstances, I have come to the conclusion that the provision contained in the Manual requires to be amended so as to provide that project casual labour will also get the scale rate if the same happens to be higher than the local rate, if it is employed for a continuous period of six months. In order that there may be no misunderstanding in regard to this decision, I may clarify that, as a result of my this decision, project labour will not acquire the status of temporary service, nor will it have the benefit of any future increments. All that project labour will have under the above decision will be that, if the local rate happens to be lower than the scale rate, then, after the project labour has been employed for a continuous period of six months, it will be paid at the scale rate.

Recommendations of Dearness Allowance Commission

4.24. Mr. Kulkarni makes an impassioned plea in support of the present demand by reference to the findings arrived at by the Dearness Allowance Commission. In paragraph 4.10 of Chapter IV of its Report, the D.A. Commission records the finding that "it would not be unreasonable to hold that at the present prices the income level upto Rs. 150 per month represents the subsistence level." From this finding Mr. Kulkarni builds up an argument to the effect that, under the present circumstances, Rs. 150 is the minimum remuneration which any labourer, casual or otherwise, requires to be paid. Mr. Mahadevan is right in contending that it is not proper to derive support from the above finding for securing Rs. 150 per month as a minimum wage. The Dearness Allowance Commission was not called upon to decide the question of minimum wage. The problem that was referred to it for solution was in regard to the amount of dearness allowance. In resolving that problem, the Dearness Allowance Commission considered the question of the vulnerability of the wage earner to the rising cost of living and the class of wage earners which may not be able to absorb any future rise in the same. It is in regard to the latter aspect that the Dearness Allowance Commission records the finding that the class of wage earners whose income is upto Rs. 150 per month will not be able to absorb any further rise in the cost of living. It is because of this finding that the Dearness Allowance Commission recommends, which recommendation was accepted, that a wage earner in the pay range

of Rs. 70 to Rs. 109 per month should be granted 90 per cent of neutralisation for meeting 10 points rise in the average of the index above 175. It is important to notice that this does not mean that the wage earner getting wage below Rs. 150 is to be granted a rise in his remuneration which will bring it upto the level of Rs. 150. According to the above recommendation, the pay-scale of the wage earner will remain where it is but any future rise in the cost of living will be neutralised in the manner aforesaid in regard to the pay range of Rs. 70 to Rs. 109 per month. Moreover, it is noteworthy that the demand of the Federation is not based on the above finding. The minimum of the pay-scale plus dearness allowance at present is Rs. 141. It is this latter amount which the Federation has demanded for payment to casual labour. At this stage may be considered an alternative argument of Mr. Kulkarni based upon the above finding. As I have already pointed out the present orders are that, whatever may be the local rate, if the same happens to be less than the minimum rate prescribed under the MW Act either for comparable scheduled employment or non-scheduled employment, then, the minimum wage rate is to be paid. Mr. Kulkarni's alternative argument is that, having regard to the above finding, Rs. 150 per month must be regarded at least as the minimum wage. However, the Central Government has recently passed orders under the MW Act (*vide* their Notifications Nos. SO 1917 and SO 1918 dated 19th May 1969) fixing minimum wages in regard to certain scheduled employments, two of which have relevance to railway administration. The minimum wages which have been fixed in regard to these employments are different in different localities. The least minimum wage which has been prescribed by the Central Government is Rs. 2.40 per day, which works out at Rs. 72 per month. I have no reason to believe that the Government did not take into consideration, in passing its latest orders regarding the minimum wage, all the relevant factors including the question of subsistence wage. It is true that there is a glaring difference between the two figures, one given by the Dearness Allowance Commission and the other by Central Government. Whereas, according to the Dearness Allowance Commission, at the price level of 1967 the subsistence level is Rs. 150 per month, according to Central Government, the minimum wage in May, 1969 is only Rs. 72 per month. However, it is for a high-powered Pay Commission to resolve this conflict. In any case, I have no materials before me to decide which of the aforesaid two figures really represents the subsistence level. For the present, I am unable to accede to the argument of Mr. Kulkarni that the scale rate should be granted on the finding recorded by the Dearness Allowance Commission. However, though this is so, in my opinion, the finding recorded by the Dearness Allowance Commission has a relevance for another purpose. Having regard to the fact that that finding has been accepted by Government and is duly given effect to in regard to all Central Government employees, in my opinion, it is not right to say that the said finding should not be applied in favour of casual labour. Even on the assumption that, when Central Government fixed the minimum wage under the above two Notifications, they took all relevant factors into consideration,

it is quite clear that, so far as the future is concerned, the fixed minimum wage will be less than the real minimum wage, if the index of the cost of living happens to rise after the date on which the fixed minimum wage was arrived at by Central Government. Having regard to the finding of the Dearness Allowance Commission, it must be held that casual labour remunerated at the above fixed minimum wage will not be able to absorb any further rise in the cost of living and that, therefore, in regard to any further rise in the cost of living after the date of the above Notifications, casual labour must be granted an allowance which will neutralise that further rise. In that view of the matter, in my opinion, it would not be improper if it is held that any further rise in the index of the cost of living, after the date of the above Notifications, should be neutralised in the case of casual labour by paying it the dearness allowance in the same manner as it is neutralised in the case of regular employees of Central Government. Therefore, I decide that, when casual labour is to be remunerated on the basis of the minimum wage fixed by Central Government, then, if there is any further rise in the index of the cost of living after the minimum wage was fixed, that further rise must be neutralised in the case of such casual labour by granting neutralisation on the same conditions and scale as recommended by the Dearness Allowance Commission.

Comparison with rate of daily travelling allowance

4.25. Another argument which is pressed into service by Mr. Kulkarni is based on the fact that railway workers are being paid daily allowance at the rate of Rs. 3.75 and, therefore, it is absurd that casual labour should be remunerated at the rate of Rs. 2.40 per day only. He contends that, whereas daily allowance is paid for railway worker for himself alone for meeting his out-of-pocket expenses, wages are to be paid for maintenance not only of the worker himself but also for his family. I do not think that this argument has any merit. Daily allowance is being paid to meet the out-of-pocket expenses for a number of purposes some of which depend upon the rates for lodging and boarding prevailing at the place where the worker happens to be sent for railway work. On the other hand, wages for actual service rendered by railway servants are being paid on different considerations altogether. Under the circumstances, I hold that no conclusion can be arrived at merely on the basis of the rate at which daily allowance is being paid to railway servants.

Summary of Decisions

4.26. For the sake of convenience, I summarise below the decisions which I have arrived at in regard to this Term of Reference :—

- (1) The Board should issue immediate directives in regard to the grievance referred to in paragraph 4.14 so that the rules regarding the definition of "casual labour" are not contravened and also so that they may be implemented in their true spirit. The Board should also devise a proper machinery to see that breaches of the above rules that are committed are set right immediately and it must also see that employment cards are issued to casual labourers so that evidence

regarding the continuity of service is not destroyed. (*vide* para 4.14).

- (2) The broad contention of the Federation that casual labour should be treated, in the matter of payment of wages, on a par with regular labour is not, subject to the decisions mentioned hereinafter, accepted. (*vide* para 4.15).
- (3)
 - (i) Definite instructions should be issued to the effect that whatever figures of local rates are obtained from the localities concerned must be taken as the figures at which casual labourer is to be paid in respect of the locality from which the figures have come and that the practice obtaining in one of the divisions of extracting an artificial rate by tabulating the various rates should not be followed.
 - (ii) Although it is open to each railway administration to fix the date from which the ascertained rates should become effective, the time-lag between the date in respect of which the local rate is collected and it is made effective should never be more than three months. If, for some reasons, the time-lag is longer than 3 months, then, casual labour should be paid, for the period previous to such 3 months, at the new local rate if the same happens to be higher than the previous local rate.
 - (iii) If, for some reasons, the local rates are not or cannot be ascertained for a period of more than one and a half years, then, casual labourer should be paid at the rate of 1/30th of the minimum of the time scale plus dearness allowance payable to the corresponding railway worker. (*vide* paragraph 4.18).
- (4)
 - (i) The period of maximum service for earning temporary status should be fixed at four months instead of six.
 - (ii) If casual labourer is engaged on works which automatically expire on 31st March, the continuity of his service shall not be regarded as broken if sanction for that work is given subsequently and the same casual labourer is employed to finish the work, provided further that no casual labourer shall be prevented from working on such job so as to deprive him of earning the status of a temporary railway worker. (*vide* paragraph 4.19).
- (5) The present provision made in the Manual for payment of wages to scheduled labour should be scrapped and, instead, a new provision should be introduced which would bring scheduled labour on a par with non-scheduled labour in the matter of payment of wages, *i.e.*, it must be provided that scheduled labour also will be paid either at the local rate, or, if the same is not available, at the scale rate, subject to the further provision that if either of these rates happens to be less than the minimum, then, scheduled labour will be paid the minimum wage fixed by the appropriate authority. (*vide* para 4.21).
- (6) The provision contained in the Manual in regard to project casual labour should be so amended as to provide that such casual labour will also be paid the scale rate if the same happens to be higher than the local rate, if the project casual labour is employed for a continuous period of six months in the same type of work. It may be clarified that, as a result of this decision, a project casual labourer will not acquire the status of temporary servant, nor will he have the benefit of any future increments. (*vide* para 4.23).
- (7) If casual labour is remunerated on the basis of the minimum wage fixed by Central Government, then, if there is any further rise in the index of the cost of living after such minimum wage was so fixed, that further rise must be neutralised by granting casual labour neutralisation on the same conditions and scale as recommended by the Dearness Allowance Commission. (*vide* para 4.24).
- (8) The overall effect of the above decisions is as follows :

All casual labour of whatever category will be paid at the local rate or, if such local rate is not available, at the scale rate, subject to the provision that if either of these two rates happens to be less than the minimum prescribed by the MW Act either for scheduled employees or employees comparable to such scheduled employees, it will be paid at the minimum wage fixed by the MW Act, with a further proviso that if there is any rise in the index of the cost of living after such minimum rate was fixed by Government, then, such further rise will be neutralised on the same conditions and scale as recommended by the Dearness Allowance Commission. However, in the case of casual labour employed under emergent circumstances or in the case of specialised casual labour, power will vest in the relevant authority to pay wages at a higher rate provided the conditions which are at present prescribed for such payment are fulfilled. Non-project casual labour will acquire the status of temporary service if it is employed continuously for a period of four months in the same type of work. However, project labour under similar circumstances if employed for a period of six months will be paid only the scale rate if it happens to be higher than the local rate, but such labour will not earn future increments in the scale or be entitled to any fringe benefits. If the scale rate happens to be less than the minimum wage prescribed by the appropriate authority, such project labour will be paid the minimum wage rate with the benefit of neutralisation as mentioned hereinbefore in case there is any further rise in the index of the cost of living after the minimum wage was fixed by the authority concerned.

TERM OF REFERENCE No. 4—HOURS OF WORK AND GAZETTED HOLIDAYS FOR CLERICAL STAFF

Preliminary

5.1. The Fourth Term of Reference is as follows :

“The disparity between the hours of work and annual gazetted holidays at present prescribed for clerks at railway stations, sheds and depots on the one hand and those prescribed for clerks in administrative offices on the other hand should be removed by granting the former the privileges available to the latter. If this is not possible, the former should be monetarily compensated for the extra hours and days of work done by them.”

5.2. The demands contained in this Term are based on disparities in regard to two matters : (1) hours of work and (2) gazetted holidays. As I shall presently show, there is no dispute regarding the existence of disparities in regard to these two matters. The disparities exist in regard to the clerical staff. The group of clerks which is alleged to suffer from them are those working at three places : (1) stations, (2) sheds, and (3) depots. The clerical staff which does not suffer from them is designated as clerks working in administrative offices. The main demand is for removal of these disparities. The alternative demand is that, if such removal is not feasible for any reason, then, monetary compensation should be paid to the concerned clerical staff.

5.3. From the above summary of the Term, it is quite clear that the problem posed by this Term of Reference relates to a certain group of clerks. To understand the nature, scope and extent of this problem, it is necessary to mention a few facts. All clerks working on railways are recruited by their respective railway administrations through their respective Railway Service Commissions. Broadly, they are recruited to work in five types of offices : (1) Headquarters offices, (2) Divisional offices, (3) District offices, (4) Offices under Works Managers or Deputy Chief Mechanical Engineers, and (5) subordinate offices under senior supervisors or other senior subordinate officials working at stations, sheds, yards and depots. The qualifications prescribed for recruitment of such clerks and the tests conducted by the Service Commissions for such recruitment are common. The panels of clerks prepared by the Service Commissions are sent to the concerned railway administrations which distribute the selected recruits to the Heads of various units of promotion in each of the above five offices, according to the requirements of each. The Headquarters offices are divided into different branches, each containing a section or sections, each branch being a separate unit of promotion. Similarly, the Divisional offices are also divided into different branches, not necessarily on the same pattern as the one at the Headquarters offices, but each branch or a group of branches here

also is a separate unit of promotion. However, the clerks assigned to the various branches in the Divisional offices are required to work not only in the branch operating at the Divisional office but also in the subordinate offices attached to the branch concerned. Similarly, the District offices and the offices of the Works Managers or Deputy Chief Mechanical Engineers (hereafter called other main offices) are also divided into suitable branches but they form a common unit of promotion. In some cases, the Establishment section of the District offices is attached to the Establishment branch of the Divisional offices, and the clerks working in the offices of the Workshop Foremen are attached to the offices of the Works Managers or Deputy Chief Mechanical Engineers. The Chief Personnel Officers assign the recruits to each branch at the Headquarters offices from the panels of clerks distributed to the Headquarters offices in accordance with the requirements of the branches and the vacancies existing therein. Similarly, the Divisional Personnel Officers and the District Officers distribute the clerks to the various branches in the divisions and the districts, including workshops under the Works Managers or the Deputy Chief Mechanical Engineers, according to the requirements of each branch and the vacancies existing therein. The clerks in these Divisional and District offices and the other main offices thus get assigned to either a branch of the Divisional, District or other main offices, or to one of the subordinate offices according to the exigencies at the time of distribution. The clerks so recruited are in the grade of Rs. 110—180. These clerks are eligible in due course for promotion to five higher grades which are (2) Rs. 130—300, (3) Rs. 210—380, (4) Rs. 335—425, (5) Rs. 350—475, and (6) Rs. 450—575. The Railway Board has allotted percentages to each of the above grades. 50 per cent is allotted to the first grade of Rs. 110—180, 40 per cent to the second grade of Rs. 130—300, 8 per cent to the third grade of Rs. 210—380 and the balance of 2 per cent is allotted jointly to the remaining three higher grades. Though the percentages for the various grades on railways are fixed as above, the actual pin-pointing of posts is made with due regard to the importance or worth of the charges in different departments. According to the orders of the Railway Board contained in letter No. PC-67/FE-44 dated 15-12-67, the higher grade posts are to be distributed between Headquarters and Divisions or Workshops or other subordinate offices separately for each unit of promotion in grades for which promotion is unit-wise and not railway-wise. However, the bulk of the posts in the grade of Rs. 210—380 and all the posts in the highest three grades are assigned to the Divisional, District and other main offices only and not to the subordinate offices.

5.4. From the above summary, it is clear that the clerks who come to be assigned to the Headquarters

offices are not liable to be transferred to any of the Divisional, District or other main offices. The result is that, clerks so assigned begin and end their careers in the Headquarters offices. As against this, the clerks in the Divisional, District and the other main offices have to work in the course of their careers either at such offices or in any of the subordinate offices. However, they perform duties in the latter offices so long as they are in the grades of Rs. 110—180, Rs. 130—300 or, in some cases, Rs. 210—380. The moment a clerk gets promoted to the higher grade of Rs. 335—425, his future field of duty is in the Divisional, District and other main offices.

5.5. It is thus evident that the clerks attached to the Headquarters offices are not liable to perform field duty at any time of their careers. It is also equally clear that the clerks who are in the higher grade of Rs. 335—425 and above are also not liable to perform such duty. However, the clerks attached to the Divisional, District or other main offices who are in the lower three grades of Rs. 110—180, Rs. 130—300 and Rs. 210—380 are liable to perform both field duty and non-field duty.

5.6. The clerical staff which performs field or open line duty is mainly concentrated in the offices at stations, sheds, depots, workshops and yards (hereinafter called field offices). I shall describe such clerical staff as field staff hereafter. The clerical staff which does not perform field or open line duty is concentrated in (1) Headquarters offices, (2) Divisional offices, (3) District offices, and (4) offices of the Works Managers or Deputy Chief Mechanical Engineers (hereinafter called non-field offices). I shall hereafter describe such staff as non-field staff.

5.7. It follows, therefore, that the problem posed by this Term does not concern the clerks working in the Headquarters offices at all since none of the staff attached to the various branches of those offices has to perform or is liable to perform field duty. It also emerges that the problem does not concern the clerks in the higher grades, *i.e.* grade of Rs. 335—425 and above exclusively employed in the Divisional, District and other main offices. The problem concerns only the clerks in the three lower grades of Rs. 110—180, Rs. 130—300 and Rs. 210—380, attached to Divisional, District and other main offices. These clerks are liable to render field duty in the course of their careers. The staff concerned with this problem constitutes about 90 per cent of the staff allotted to the Divisional, District and other main offices. I have no statistics as to what percentage of the latter actually work in the Divisional, District and other main offices and what percentage works in the above field offices. However, I understand that, roughly speaking, the percentage of clerks which works in the field offices is about 30 per cent of the clerical staff which works in the Divisional, District and the other main offices. The problem pertains to this group of clerks which actually works in the field offices.

Comparison of entitlements of Field and Non-field staff

5.8. In regard to the hours of work, a clerk in the non-field office works either $6\frac{1}{2}$ hours on all working days with one Saturday off or $6\frac{1}{2}$ hours for five working days with four half Saturdays, the working hours on which Saturdays differ from offices to offices. However, broadly speaking, the total number of hours for which a non-field clerk works is $37\frac{1}{2}$ hours per week. As against this, a field clerk, in the bulk of field offices, works for 8 hours on all working days including all Saturdays. However, the total number of weekly working hours is not uniform for all units of promotion. The bulk of them works for 48 hours a week, some work $36\frac{1}{2}$ hours a week and some others 51 hours a week. The question of the enjoyment of gazetted holidays is, in some respects, linked up with the enjoyment of casual leave and, therefore, whilst mentioning the figures of gazetted holidays, it is also necessary to mention the figures of casual leave. Broadly speaking, the non-field staff enjoys, in the course of a year, 16 gazetted holidays including 3 National holidays, plus 2 optional holidays called restricted holidays and 12 days' casual leave. As against this, the field staff is entitled, in the course of a year, to 3 National holidays only but, instead of 12, it gets 15 days' casual leave. As a matter of fact, in some offices, the bulk and, in some others, a few, of the field staff do not actually enjoy even these 3 National holidays, in which cases of non-enjoyment, the staff is paid $1\frac{1}{2}$ times the normal pay for performance of duty on those National holidays, or sometimes, the staff is given compensatory off-days. However, there are variations amongst the different field offices even in this respect. In some field offices, the field staff enjoys as many as 21 gazetted holidays and, in some others, as many as 20 days' casual leave.

5.9. From the above recitals, it is quite clear that, in the matter of working hours, on an average, the field staff works for $1\frac{1}{2}$ hours more every day plus either one whole Saturday or 2 half Saturdays more than the non-field staff. On the whole, the field staff puts in per week 7 to 8 hours more than the non-field staff. It is also equally clear that, in the matter of holidays, the non-field staff gets 15 holidays more per year than the bulk of the field staff, but the field staff gets 3 more days of casual leave.

5.10. The facts narrated in the above paragraphs in regard to hours of work, gazetted and other holidays and casual leave are admitted facts.

Federation's arguments in Support of the Demand

5.11. On the basis of the above facts, Mr. Kulkarni argues that, taking the disparities in the matter of hours of work and holidays together, a field clerk works approximately 54 hours more in a month than a non-field clerk and, having regard to the fact that, according to the Indian Railways Act, the maximum number of hours which a clerk can be made to work in a week is 54, he works for one full week more in a month than what his colleague does in the non-field office. Mr. Kulkarni further maintains that, having regard to the evidence of witness Hamid, who

says that a clerk has to stay every day beyond his shift hours and is called upon to perform duty during off-duty hours for a period of about 10 days in a month, the total amount of additional hours which a field clerk has to put in is more than even the prescribed maximum number of weekly hours.

5.12. It is common ground that the clerical staff is classified, under the Indian Railways Act, as Continuous staff and is governed by the Hours of Employment Regulations and, as such, the statutory maximum number of hours which a clerk can be required to work per week is 54, averaged over a fortnight, he being entitled to payment of overtime allowance for any work done beyond 108 hours per fortnight.

History of hours of work and holidays in offices

5.13. In order to understand the rival arguments for and against the demand of the Federation, it is necessary to mention the history relating to the hours of work and gazetted holidays in regard to the clerical staff on railways.

5.14. It appears from the Adjudicators Report that, before he gave his Award, the hours of work of clerks in the non-field offices of different railways varied from 33 hours to 44 hours a week and those in the field offices varied from 48 to 54 hours a week. The Adjudicator says in his Report that his recommendations are not intended to affect any existing conditions on railways which might be more favourable to the employees. An earnest plea was made before the Adjudicator, on behalf of the field workers, for unifying the conditions of service in the matter of hours of work between the field and the non-field clerks. Remarking that the analogy between the non-field and the field offices is fallacious, the Adjudicator turns down the demand for equality mainly on three grounds which may be summarised as follows : (1) that the higher the offices the higher, generally, is the type of office work required; (2) that the work in the field establishments is not so strenuous as it is in the Headquarters and District offices, though that work requires other qualities which are necessary to be displayed when clerks come into contact with labour and members of the public; and (3) that the duty hours of the field clerks have to be synchronised with the hours of work of the other staff at stations, sheds and yards. The Adjudicator, therefore, concludes that it is neither necessary nor feasible to fix shorter hours of work for field clerks. As a result of the recommendations of the Adjudicator, clerks came to be classified as Continuous workers. Therefore, the outcome of the recommendations of the Adjudicator was that the working hours in those field offices wherein they were more than the standard maximum of 54 were curtailed to 54 and the working hours in those field offices wherein they were less than 54 were preserved. The Second Pay Commission considers the identical question in Chapter XXXV of its Report. The recommendations of the Commission in regard to hours of work may be summarised broadly as follows : (1) the working hours of the non-field staff are on the low side and an increase would be justified but the *status quo* in regard to the working hours of all categories should be maintained

and, instead of increasing them immediately, an attempt should be made first to obtain better output within the prescribed hours; (2) the 5½-day week (36 hours per week) then prevailing might be fairly conveniently worked out in alternating weeks of 5 and 6 days; (3) uniformity in weekly hours according to groups of employees is neither necessary nor feasible, and (4) in establishments, in which industrial and non-industrial workers work together, the latter should observe the same hours as the former when the nature of their duties is such that their presence is necessary for efficient working of the industrial staff. The Board accepted recommendations Nos. (3) and (4) *in toto* and recommendation No. (2) with the modification that, instead of two, only one whole Saturday should be given as an off-day. The Board also accepted the Commission's recommendation in regard to the maintenance of the *status quo* as it had done with regard to a similar recommendation of the Adjudicator. As a result of the acceptance of recommendation No. (4), the field offices, such as the offices of the PWI, IOW (*i.e.* Permanent Way Inspector, Inspector of Works) were put on the same footing in the matter of hours of work as the Headquarters offices, the Divisional and the District offices and other main offices, with the modification that they should work on all Saturdays. As regards the field staff in sheds, workshops, yards and stations, the Board directed that the field staff therein "may if necessary be required to work the same hours as the other staff in the establishments concerned, when the duties of clerks are such that their presence throughout is necessary for efficient working of the entire staff".

5.15. The question of holiday entitlements was also one of the items for consideration before the Second Pay Commission. The questions which arose before that body were, whether groups of workers should have more or less the same number of holidays and whether complete or partial uniformity in the matter of holiday entitlements amongst all groups was desirable or feasible. The Commission, whilst extolling the initiative of the Punjab Government, in reducing the number of holidays from 23 to 12, recommends that the holidays should be reduced in all offices from 23 to 16. The Commission also holds that the operating staff on railways should not be allowed any of the public holidays. It further holds that there is no scope for uniformity in that regard even within the same group of railway servants. The Commission, however, recommends that the staff which could not be allowed public holidays should be granted compensation at 1½ times their ordinary pay for their work on the 3 National holidays. It further recommends that the holiday entitlements of the Industrial staff should not exceed 16 in number. As regards the non-industrial staff which works with the industrial staff, it repeats its recommendation which is summarised as recommendation No. (4) above. The Commission also rejects the concept that all Government employees must have the same holiday entitlements and, that, if they cannot be so granted, they should be paid compensation in lieu thereof.

5.16. From the above summaries and history, the following results emerge : (1) that a large number of field staff works for 48 hours a week as against 37½

hours a week of the non-field staff and that, though the field staff has more casual leave, its holiday entitlements are less than those enjoyed by the non-field staff; (2) that a significant number of field staff has hours of work, holiday entitlements and casual leave at par with the clerks employed in the non-field offices; and (3) that the field staff has in some stray offices, such as the offices of the Integral Coach Factory, the Chittaranjan Locomotive Works and the offices of Northern Railway have more holiday entitlements and/or casual leave than the staff working in the non-field offices.

Board's arguments against the Demand

5.17. In its reply, the Board summarises the reasons for the above disparities as follows : "Thus, the entitlements in respect of hours of work, holidays and casual leave that are at present in force for clerical staff of various industrial and field establishments are a combination of traditional entitlements (in view of Rajadhyaksha's recommendation that existing favourable entitlements should be preserved), local requirements and what was granted to them through the recommendations of High Powered Commissions." The Board opposes the demand of the Federation mainly on the ground that it is impracticable to remove all the disparities and to unify the conditions of service in regard to the above matters into one common entitlement.

5.18. The main, if not the sole, ground on which the demand of the Federation is based is that both the field and the non-field clerks are commonly recruited and maintained on a common seniority list. The argument is that, having regard to the above common points, both groups of clerks must be accorded a common treatment in regard to hours of work and holiday entitlements. The Federation urges that the plea of the Board that the disparities can be justified on the ground of practical difficulties is no plea at all and that, if it has any force at all, it is no answer, in any case, to its alternative demand for grant of compensatory relief. The Board counters the above argument on the submission that the two sets of clerks bonded as aforesaid do not really constitute a single cadre but are in reality two separate cadres. It contends that the two sets of clerks are commonly recruited only for administrative convenience and that a common seniority list is maintained primarily for the purpose of ensuring that the promotional prospects of the field staff are not barred or stunted.

Assessment of rival arguments

5.19. In my opinion, there is no justification for the above submission of the Board. Firstly, it is fantastic for an employer to maintain, even if the character of the two cadres is different, a common seniority list simply for ensuring that promotional prospects are not stunted or barred. Secondly, there is no evidence in support of the above submission. On the contrary, the material on the record shows that the two groups are not only initially one but maintain, organisationally and functionally, a common character all throughout. However, though this is so, the argument of the Federation that the two groups being bonded as aforesaid should have the same treatment in regard to

hours of work and holiday entitlements is not convincing. In my opinion, subject to any statutory or any other binding legal provision on the subject and considerations of health and efficiency of the workers, conditions of any service must be governed by the requirements of the service and the nature of the work to be performed therein. This is the cardinal principle which must govern any service. This principle has been approved by both the Adjudicator and the Second Pay Commission and, with respect, I agree with them. The Railways Act prescribes 54 hours a week as the maximum number of hours for which a Continuous worker can be employed. The rules under the Act also contain suitable provisions on this subject. In my opinion, within the frame-work of the Act and the rules and subject to the considerations of health and efficiency, the railway administrations have a right to fix the rostered hours of different categories of railway staff on the basis of requirements of railway service and the nature of work to be performed by the category of the concerned staff. The demand of the Federation cannot and does not stand the test of this cardinal principle. As has been pointed out both by the Adjudicator and the Second Pay Commission, the lesser number of hours of work observed in the administrative offices is more the result of historical circumstances and the outmoded belief that a white-collared worker must necessarily work for a lesser number of hours than an artisan. One thing is certain that the number of hours which the office staff should work has never been objectively determined. The circumstance that the non-field staff and even some members of the field staff work lesser hours is more rooted in those parts of the recommendations of the Adjudicator and the Second Pay Commission wherein they have stated that the *status quo* in regard to hours of work and holiday entitlements should be maintained because they did not intend to affect the existing conditions on railways which may be more favourable to the employees. Therefore, having regard to the findings of the Second Pay Commission that the working hours of the non-field staff were on the low side and that their increase would be justified, the lesser number of hours of work observed by the non-field staff must be regarded more as a concession to the non-field staff than as a condition of service objectively determined on its own merits. In view of this position, the demand of the Federation may be characterised more as a demand for the extension of a concession than a demand justified on objective considerations. I am not called upon by either side to determine objectively what exactly should be the hours of work and holiday entitlements of railway clerks as a whole. If that basic task were undertaken and if, on merits, a conclusion could be reached that the hours of work should be 37½ per week and that the holiday entitlements should be as now obtaining in the administrative offices, then, the demand of the Federation would certainly be justified. If, on the other hand, the conclusion is reached that the hours of work obtaining for the field staff and their holiday entitlements represent correct conditions of service, then, not only the removal of the above disparities in favour of the field staff is not justified but the correct solution is that the working hours of the non-field staff should be raised and their holiday entitlements should be

reduced to the level of those for the field staff, subject to a further consideration as to whether the actual conditions in regard to the above two matters affect either health or efficiency of the concerned staff. No complaint is made by the Federation on the latter account, nor is there any material or evidence on the subject which would justify the conclusion that health or efficiency of the field staff is being in any way affected by the existing conditions in regard to hours of work and holiday entitlements of the field staff. Moreover, the concept that there should be uniformity in the above two matters amongst the same groups of employees, though desirable, cannot have universal application, especially if the milieu in which the two groups are working is not the same or similar. I am entirely in agreement with the principle enunciated by the Second Pay Commission that uniformity in regard to the above matters "is not necessary or feasible." In my opinion, the principle that requirements of service and nature of work should determine the conditions of service in the above two matters is of such paramount importance that it cannot be subjected to the concept of uniformity in the above two matters and that, even if that concept has any relevance, it must be given a subordinate and a secondary place. That this is and should be so in regard to the actual operating staff on the railways is axiomatic. In order to give effect to the above principle if the presence of any clerical staff is necessary to maintain efficiency of the operating staff, it is imperative that the hours of work of the clerical staff must synchronise with the hours of work of the operating staff. Moreover, there is evidence to the effect that disparity in the number of hours of work in respect of the same category of staff is not uncommon on railways. Witness Madhav has cited some examples on this subject. The examples quoted are those of Running Staff, Travelling Ticket Examiners, Ticket Collectors, Commercial Clerks and Road Van Clerks. These examples show that the rostered hours are not necessarily uniform for all categories of servants of the same classification and that such hours depend upon the need of work at a particular station or office. In this connection, the observations made by the Second Pay Commission in connection with some other matters appear to be a pertinent. Whilst considering the demand of certain groups of Government employees that they should be accorded the advantages of certain other groups and that, at the same time, they should be allowed to retain their own advantages, the Commission observes that pursuit of uniformity will end in one of the two results: (1) wide and excessive de-liberalisation of conditions of employment, or (2) equally wide and excessive liberalisation in those conditions. In connection with a similar demand in regard to casual leave, the Commission observes that uniformity should not be an obsession and might, with advantage, be given up whenever objective considerations call for a departure from the standard arrangement. It further observes that the concern for uniformity can be and, in fact, in some cases, has been taken too far. With respect, I am in agreement with these weighty observations.

Main Criticisms against grounds supporting existing disparities

5.20. Mr. Kulkarni's main attempt in regard to this Term of Reference is to show that the four grounds S/1 RB/72—9.

on which the Railway Board justifies the present disparities are untenable. The four grounds are : (1) that the work in the field offices is inferior to the work done in the non-field offices; (2) that their hours must synchronise with those of the non-clerical staff, (3) that the existing arrangements are traditional entitlements; and (4) that they embody the results of the recommendations of high-powered Commissions. Mr. Kulkarni's attempt is to show that none of these grounds has any validity and can justify the present disparities. He contends, in the alternative, that even if the grounds had validity in the past, the same has disappeared because of change of circumstances.

5.21. I have already referred to the findings recorded by the Adjudicator that the higher the office the higher, generally, is the type of office work required and that the work in the field establishments is not so strenuous as in Headquarters and District offices. Mr. Kulkarni has examined some witnesses to challenge the above proposition. The effect of their evidence is that the work done by the clerks in the two lowest grades in the field offices is of the same kind, if not superior, to the work which is done in the non-field offices. The witnesses' evidence is in regard to duties which are being performed by the clerks in the two lowest grades in the field offices, though all of them have no personal knowledge regarding the duties performed by their counter-parts in the non-field offices. The witnesses who have experience in non-field offices unfortunately appear to have given either incorrect or partisan evidence on the subject. The Board's witness Madhav deposes that the work done in the field offices is essentially of a routine kind and that the cases dealt with in such offices require simple processing and acquaintance with local precedents only. He says that, as against this work, the work done in the non-field offices, especially Divisional and District offices, requires more critical examination of the record and the information received from field offices and more detailed knowledge of the rules and communicative skill in expression. The evidence of the witnesses of the Federation and the Board, however, reveals that, the work done in the field offices is multifarious, more so in small field offices, and, consequently, the clerk in such offices requires acquaintance with a wider and more varied range of subjects than a clerk working in the non-field offices, especially at the Divisional and Headquarters level. Mr. Kulkarni contends that for whatever superior type of work that is being done in the non-field offices, those offices have the services of clerks of the higher grades and no kudos need be showered for that on the clerks of the lower grades. It may be true that whatever greater and more concentrated application of mind is required in the higher offices is bound to be reflected in the work performed by the clerks of the lower grades and, to that extent, the observations made by the Adjudicator may still have validity. However, Mr. Kulkarni contends that whatever justification there may have been in the past for the above observations, not only the quantum of work in the field offices but also the quality thereof has, on account of certain recent events, changed, and that this new type of work must at least put the field staff on a par with the non-field staff. The evidence discloses that, in recent

years, new duties have been assigned to field clerks on account of (1) divisionalisation, (2) delegation of powers to senior subordinates, and (3) phenomenal increase in railway traffic. It is true that, on account of divisionalisation and delegation of powers, nature of the work which the field offices used to perform in regard to (1) grant of Passes, (2) grant of Privilege Ticket Orders, and (3) infliction of minor penalties, has changed. It is also true that, in spite of the simplification of work in regard to leave accounts, the above work requires greater acquaintance with rules than what was required in the past. Mr. Kulkarni specially emphasizes two types of work done in the field offices: the work of making relief arrangements and arrangement in regard to stores. He says that the work in regard to these two matters is highly responsible work and that any deficiency or indifference in regard thereto will entail serious repercussions on efficiency and out-turn of work done at stations, sheds, workshops and yards. He contends that taking an overall picture of the work which is done in the field offices now, it cannot be said that the work done by the clerks of the lower grades in the field offices is inferior to the work which is done by their counter-parts in the non-field offices. In my opinion, there is some force in this argument, though the validity of the observations cannot be challenged that the work which is done in the non-field offices requires greater application of mind, critical examination of record, more detailed knowledge of rules and greater communicative skill in expression. Moreover, the Divisional and District offices also deal with matters of policy and issue directives which are of considerable importance—a work which is not done in the field offices.

5.22. There is some justification for the submission of Mr. Kulkarni that the quantum of work done by the field staff has increased in the wake of the increase in railway traffic. It is true that the number of staff may have increased due to the increase in work but it is not improbable that the increase in one is not commensurate with the increase in the other. This might have increased the tempo of work in the field offices but it cannot be denied also that it must have had a similar impact in the Divisional and the other main offices too.

5.23. However, taking an overall view of the evidence and the materials on the subject, I am prepared to accept broadly the proposition of Mr. Kulkarni that, grade-wise, the type of work which is done by clerks of the lowest grades in the two offices is more or less of the same type, neither superior nor inferior. In fact, Mr. Kulkarni seems to be right that a clerk working in the field office has to do multifarious work and performs duties which involve responsibility and require qualities which a clerk working in a non-field office need not possess. A clerk in the field office comes into contact with labour and members of the public and the qualities which are needed to deal with problems which arise from such contacts need no ordinary tact and skill. However, the above evidence does not rebut the proposition that the work done in the non-field offices is on the whole of a superior type and requires more application of mind and greater concentration than the

work done in the field offices and that, consequently, the non-field offices, though not necessarily the clerks of the lowest grades, may merit a somewhat different treatment from the field offices.

5.24. However, Mr. Mahadevan contends that the above ground is neither the sole nor even the main ground for the existence of the disparities and even if some of the points in support of the ground may have lost some of their force, the basis for the disparities cannot be said to have vanished and that the validity or otherwise of the other grounds must be considered on their own merits undeterred by the diminution in the force of the above ground.

5.25. The second ground is that the hours of work of the field staff have to synchronise with those of the workers at stations, sheds and yards etc. Mr. Kulkarni contends that this ground has no force whatsoever. He derives support for this from the restrictive recommendation made by the Second Pay Commission on the subject. According to him, the Commission has restricted the above principle only to industrial and non-industrial staff, the restriction being not absolute but conditional. The recommendation of the Second Pay Commission, as already indicated, is that, in establishments in which industrial and non-Industrial staff work together, the latter should observe the same hours as the former when the nature of their duties is such that their presence is necessary for the efficient working of the industrial staff. Mr. Kulkarni, therefore, contends that there is no justification for extending the above principle to those offices which do not cater to the needs of the industrial staff. Mr. Kulkarni is right in contending that the Second Pay Commission has made its recommendation in regard to the industrial and the non-industrial staff only but, though this is so, I am not convinced that the recommendation should be restricted only to those cases where the above two kinds of staff work. In my opinion, the principle is of wider application. It is noteworthy that the Adjudicator gave the principle such wider application. An organisation, industrial or otherwise, exists for achieving the optimum results and all its limbs must, therefore, necessarily work for reaching such a goal. Therefore, in my opinion, even in non-industrial staff establishments, if the absence of the clerical staff affects efficiency of non-clerical staff, the above principle must be applied too. In this connection, the evidence of witness Madhav is of considerable importance. He deposes that the clerical work in field office is an integral part of the establishment as a whole. He further deposes that the presence of the field staff is necessary during the period that the senior subordinate or the senior supervisor discharges his duties and that the latter will not be able to carry on his duties efficiently and effectively unless his clerical staff is available to him for assistance. In my opinion, this evidence is not countered by the evidence of the Federation to the effect that field staff is not available to workers of the shift which precedes and succeeds the shift in which non-clerical staff works. The evidence of witness Madhav is not that the field staff must be available to the aforesaid workers but his evidence is that they must be available to the supervisors. Moreover, on the evidence, it is incorrect to say that the field staff is not available to the

workers of the preceding and succeeding shifts. The evidence is that the rostered hours of the field staff are so arranged that the field staff is available to the workers of the preceding and the succeeding shifts. In fact, such contacts are necessary for the purpose of making relief arrangements, attending to complaints of workers and making store arrangements. The only exception is in regard to one of the shifts in the rake maintenance establishment. However, I do not think that this exception can over-ride the importance of the above principle. Therefore, in my opinion, Mr. Kulkarni's argument that, if an establishment can work for 16 hours without the presence of the clerical staff, it can also work in its absence, has no validity.

5.26. Mr. Kulkarni further contends that if the hours of work and holiday entitlements of the field staff, as is shown in Annexure IV, vary at least in some cases from those of the other staff, there is no reason why the same condition cannot prevail in the other establishments. However, the materials on record show that these variations are traditional and they still persist, not because they are justified on merits but because of the recommendations made by the Adjudicator and the Second Pay Commission that, in spite of their other recommendations, the *status quo* must be maintained. Mr. Kulkarni maintains that the shorter period of work is retained by the high-powered Commissions for the non-field staff on the footing that 48 hours per week is excessive. He contends that the above high-powered bodies retained the shorter hours to give effect to the modern trend that the hours of work should be reduced at all levels. I cannot agree with this contention. In the first instance, there is no indication in the Reports of any of the high-powered bodies which would justify the above submission. In the second instance, the assumption that the high-powered Commissions regard 37½ hours a week as ideal period of weekly service is totally unjustified. In my opinion, the *raison d'être* for the above recommendation is to be found in the anxiety of the high-powered Commissions to see that the *status quo* is not disturbed as a result of their recommendations and that the existing working conditions as a whole are not changed to the prejudice of the staff.

Traditional factors

5.27. Mr. Kulkarni contends that tradition cannot be a good ground for variations in the hours of work and holiday entitlements. Mr. Kulkarni may be right. However, a perusal of the above Annexure, which shows not only wide but kaleidoscopic variations, shows that the variations are, as a general rule, to the advantage of the workers themselves and not to their disadvantage. There is some force in the argument of Mr. Mahadevan that all these variations are rooted either in tradition or in local conditions. For example, Mr. Mahadevan justifies the grant of casual leave for as many as 20 days on North-Eastern Frontier Railway on the ground that that Railway is situated in a far-off corner of the country where, having regard to the fact that a fair proportion of employees on that Railway belongs to other States,

a few days are bound to be consumed in travelling alone when they proceed on casual leave.

5.28. In my opinion, Mr. Kulkarni's criticism against the hours of work or the holiday entitlements being based upon the recommendations of the above two high-powered bodies, has no validity. There cannot be any doubt that the Railway Board is not only justified but is bound to honour the recommendations of such bodies. If the Federation has any reasons grounded either on merits or in change of circumstances which justify a departure from those recommendations, it is for the Federation to adduce necessary evidence, materials and arguments etc. In my opinion, the Federation has, on the whole, failed to discharge this burden.

5.29. In view of my above decision, I conclude that, whilst the ground relating to the superiority or inferiority of work done in the non-field offices and field offices has become somewhat diluted, the ground relating to the presence of the field staff being necessary for preserving efficiency and output of the work of the other staff still retains its validity and that ground being of prime importance, it alone can be a good ground for justifying the existing disparities.

Latest policy of the Board

5.30. The above discussion reveals that the Board follows a policy which is egalitarian, clear-cut and definite—the same policy for which the Federation contends, but whilst implementing the policy the Board has introduced a rider which has been recognized by the high-powered Commissions. The orders of the Board in regard to the hours of work of the clerical staff of both the field and the non-field offices are that both the field and the non-field staffs should have the same hours of work. I take it that the same orders are good also in regard to holiday entitlements. The Board has laid down this policy in its letter No. PC-59/HW-1/1 dated 27-4-1960. However, the Board has put in a rider to the above principle which rider has already been referred to. That rider is that the field staff “may, if necessary, be required to work the same hours as the other staff in the establishments concerned when the duties of clerks are such that their presence throughout is necessary for efficient working of the entire staff.” Therefore, the position which emerges as a result of the above orders of the Board is that it is the duty of the officer concerned controlling each of the field offices to examine the question as to whether the presence of the clerical staff in his office is or is not necessary for efficient working of his other staff. Under the circumstances, the Federation can have a grievance only if the rider has not been properly and correctly implemented in any of the offices. Unfortunately, instead of having the question examined in that way, the Federation has gone the whole-hog by putting forward an omnibus demand which completely overlooks the above principle and the rider. There are no materials before me to show that the above position has not been examined by the officers concerned and that there are cases where the field clerks are required to put in more hours of work or to forego some holidays unnecessarily. If there are any such cases in existence, it is upto the Federation to bring those individual cases to the notice of the concerned

authorities and I am sure that those individual cases will be examined by them in the light of the above principle and rider enunciated by the Board and which rider has been accepted by me as valid on an independent examination of the question on its own merits. In the course of his argument, Mr. Kulkarni suggests that the Tribunal should undertake this task. I am sorry I cannot do so for more than one reason. In the first instance, no materials have been placed before me by the Federation to show that the problem has not been solved by the concerned authorities in accordance with the above principle and rider. In the second place, even if any problem has arisen by virtue of the neglect to follow the principle and/or the rider, there are no materials to show that it has assumed such a proportion that the rider must be scrapped and that, in the interests of justice and fairplay, the field staff must be put on a par with the non-field staff. In the third place, such detailed examination of the individual cases is not properly the function of this Tribunal. The question must be raised at the lower levels before the appropriate authorities and if the Federation is dis-satisfied with any particular decision on the ground that it has not been arrived at in accordance with the above principle and/or rider, then, I am confident that the higher authorities will look into the matter and pass suitable orders consistent with the above principle and rider.

5.31. Therefore, taking an overall view of the evidence and the materials placed by the Federation and considering the arguments adduced in favour of a change, I am not convinced that any case has been made out for departure from the present practice.

Lacunae in the existing system

5.32. However, though I have reached the above conclusions, there are some circumstances which merit anxious consideration. The clerks working both in the field and the non-field offices have a common source of recruitment and are borne on a common seniority list. When they are recruited, they are not recruited for work necessarily in the field offices. They are distributed amongst different offices on account of the vacancies existing at the time of the distribution or the exigencies occurring at the time. In other words, the distribution of clerks in different offices is not selective but is fortuitous. As Mr. Kulkarni says, it is possible that a candidate who has a higher rank in the recruitment list may come to be assigned to a field office and a candidate with a lower rank may come to be assigned to a non-field office. It is true that, having regard to the fact that there is a common cadre in regard to each unit of promotion, the clerk who comes to be assigned to a field office may be transferred to a non-field office and, on being promoted to the last three higher grades, is bound to be posted in such office. However, in this connection, it is noteworthy that, whereas a clerk who comes to be assigned to the Headquarters offices will have no period of service to do in the field office, a clerk who happens to be assigned to Divisional, District and the other main offices will have to do a part of his service in the field office and, sometimes, careers of some clerks may both begin and end in such an office. Two conflicting considera-

tions come to one's mind as a result of the above state of affairs. Firstly, it is easy to envisage that such a state of affairs can cause psychological aberrations and, in some malignant cases, may even cause psychological traumas. Such a situation is bound to gall those clerks whose lot it is to work in the field offices permanently or for considerable periods of time and embitter them against those who either work continuously in the non-field offices or who work for only short periods in the field offices. Secondly, having regard to the fact that the work in the field offices is bound up with the work of senior supervisors or with other workers, it is inevitable that the hours of work and holidays of the clerks who work in the field offices must synchronise with the hours of work and holidays of the non-clerical staff. However, having regard to my conclusion that the latter consideration is of fundamental and primary importance, the only direction in which a solution for the conundrum can be found is to discover if there are any ways which would mollify the mental tortures which the field clerks would suffer especially if they have to render long periods of service in the field offices. In the course of the present proceedings, some suggestions were made on this aspect of the matter which may now be considered. The Board suggests that the common cadre may be separated and separate recruitment may be made and separate seniority list maintained for the field and the non-field staffs. However, I do not think that this solution is profitable. It is quite clear that, if this arrangement is resorted to, then, having regard to the fact that the highest grade of clerks in the field offices is that of Rs. 210—380, the chances of promotion of the field clerks to the higher grades will be completely barred. There is a second suggestion with which I agree. It is that the disparities at present in existence, if they are inevitable, must be shared equitably by the staff as a whole and the burden thereof should not fall upon a section of the staff only and that means may be devised by which the concerned clerks are rotated between the field and the non-field offices in such a way that none of them has to put in inordinately long periods of service in the field offices or none of them has an entire period or unnecessarily long periods of service in the non-field offices. In this connection, the practice deposed to by witness Madhav as prevailing in the Integral Coach Factory offices commends itself to me. I am not quite sure as to whether that practice can be followed effectively in regard to all the non-field offices, but, in my opinion, a scheme can be devised in such a way that the field staff and the non-field staff are interchanged at the initial stages of their service and/or at the initial stages of their promotion to a higher grade. Another direction in which some relief can be granted is in regard to those establishments where the clerical staff is required to put in more hours of work per week than 48. If this is being done in any establishment on the ground of tradition only, then, in my opinion, the tradition may well be disregarded. It can be preserved if it is necessary on the basis of the principle that the working hours of the field staff must synchronise with those of the non-clerical staff. In my opinion, some relief can also be granted in the matter of holidays specially in those offices where there is sufficient number of clerks who can be rotated

on different holidays. *Prima facie*, the number of holidays granted in the field offices appears to be inadequate. In this connection, the recommendation of the National Labour Commission is noteworthy. That Commission recommends, besides three National holidays, five festival holidays for all Government servants including the industrial staff. If and when this recommendation comes to be accepted, there is no doubt that the field staff will also get the benefit thereof. But even if this recommendation does not come to be accepted, in my opinion, if no violence is done to the main principle that efficiency of the other staff should not suffer, the question may be examined in regard to individual offices as to whether those five festival holidays can or cannot be given wholly or by rotation. There is one more remedy which also suggests itself, and that is that the rostered hours of the field staff may be so arranged that whilst bringing all the members of that staff on a par with the non-field staff, efficiency of the other staff may not suffer. In this regard, Mr. Kulkarni, at the fag-end of his arguments, submits a scheme which he claims will satisfy the needs both of the Department and the clerks. However, I am unable to pronounce any judgement on the merits or demerits of this scheme. In the first instance, though the dispute is in existence for the past ten years, it appears that such a scheme was not formulated at any time of the several stages through which the dispute has passed. In the second instance, the scheme is placed before me also at a very belated stage. Thirdly, Mr. Mahadevan has had no opportunity of making any comments on the scheme on its own merits and it is quite clear that it would be unfair to pronounce any judgement on this scheme unless Mr. Mahadevan has had an opportunity to make his submissions in regard thereto. However, it is open to Mr. Kulkarni to put forward the scheme before the Board or the other concerned authorities and I feel confident that if the scheme can be put into practice in the light of the considerations which I have mentioned, the Board will make a sincere attempt to do so.

Alternative demand for compensatory relief

5.33. In view of my above conclusion that the demand of the Federation for removal of disparities is not justified, the further conclusion is inevitable that the alternative demand for grant of compensatory relief is not justified too.

Summary of Decisions

5.34. For the sake of convenience, I summarise my decisions as follows :

- (1) The demands of the Federation for removal of disparities and for grant of compensatory relief are rejected (*vide* para 5.31).
- (2) Having regard to the order of the Board that the field staff may, if necessary, be required to work the same hours as the other staff in the concerned establishments when duties of clerks are such that their

presence throughout is necessary for efficient working of the entire staff, it becomes the duty of the officers controlling the field offices to examine the question as to whether the presence of the clerical staff of their offices is or is not necessary for efficient working of their other staff. Therefore, the Federation can have a grievance only if the above order of the Board has not been properly and correctly implemented by any of the officers. If there are any cases which violate the above order, it is upto the Federation to bring the breaches to the notice of the concerned authorities and, I am sure that such individual cases will be examined and suitably redressed by the concerned authorities consistent with the main principle that, ordinarily, both the field and the non-field staffs should have the same hours of work (*vide* para 5.30).

- (3) The disparities at present in existence in regard to hours of work and holiday entitlements, if they are inevitable, must be shared equitably by the staff as a whole and the burden thereof should not fall upon a section of the staff only and means may be devised by which the concerned clerks are rotated between the field and the non-field offices in such a way that none of them has to put in inordinately long periods of service in the field offices or none of them has an entire period or unnecessarily long period of service in the non-field offices. In this connection, the practice deposed to by witness Madhav as prevailing in the Integral Coach Factory offices commends itself. I am not quite sure as to whether that practice can be followed effectively in regard to all the non-field offices, but, in my opinion, a scheme can be devised in such a way that the field staff and the non-field staff are interchanged at the initial stages of their service and/or at the initial stages of their promotion to a higher grade (*vide* para 5.32).
- (4) In regard to those establishments where clerical staff is required to put in more hours of work per week than 48, and if this is being done in any establishment on the ground of tradition only, then, in my opinion, the tradition may well be disregarded. It can be preserved if it is necessary on the basis of the principle that the working hours of the field staff must synchronise with those of the non-field staff (*vide* para 5.32).
- (5) In the matter of holidays, specially in those offices where there is sufficient number of clerks who can be rotated on different holidays, some relief can be granted. *Prima facie*, the number of holidays granted in the field offices appears to be inadequate. In this connection, the recommendation of the National Labour Commission is noteworthy. That Commission

recommends, besides three National holidays, five festival holidays for all Government servants including the industrial staff. If and when this recommendation comes to be accepted, there is no doubt that the field staff will also get the benefit thereof. But even if this recommendation does not come to be accepted, in my opinion, if no violence is done to the main principle that efficiency of the other staff should not suffer, the question may be examined in regard to individual offices as to whether those five festival holidays can or cannot be given wholly or by rotation (*vide* para 5.32).

(6) The Federation is at liberty to put forward a scheme before the Board or the other concerned authorities for arranging the rostered hours of the field staff in such a way that whilst bringing all the members of that staff on a par with the non-field staff, efficiency of the other staff does not suffer. I feel confident that if and when such a scheme is submitted by the Federation, the same will be examined carefully and the Board or the concerned authorities will make a sincere attempt to put the same into practice without violating the principle and the rider accepted by me (*vide* para 5.32).

TERM OF REFERENCE No. 5—HOURS OF EMPLOYMENT REGULATIONS

Preliminary

6.1. The Fifth Term of Reference is as follows :

"The present Hours of Employment Regulations which govern the hours of work, periodic rest and overtime in respect of railway staff other than those employed in workshops, falling under the definition of 'factories' in the Factories Act, should be completely reviewed."

6.2. The Hours of Employment Regulations deal with a number of topics. Though the Term of Reference is couched in very wide language, it mentions three topics in particular. These are (1) hours of work, (2) periodic rest, and (3) overtime. The demand of the Federation is that, in regard to these three and some other matters, the Hours of Employment Regulations should be completely reviewed. The review is asked for in respect of all railway staff other than those, employed in workshops, falling under the definition of "factories" in the Factories Act. The reference does not specify and clearly indicate the exact demands which the Federation makes in regard to the matters sought to be reviewed. However, in the Statement of Demands, the Federation does specify and particularise the demands in regard to the above matters, though a part thereof is still vague. The Railway Board in its reply, naturally, concentrates its attention on such specific demands. It also controverts such of the observations which the Federation has made in the Statement of Demands as are inconsistent with the stand taken by it in regard to those specific demands. In the course of its Rejoinder, the Federation, whilst substantially reiterating its original demands, modifies them in regard to one or two matters. In the course of its evidence, the Federation introduced a few more matters in regard to which there were no specific demands either in the Statement of Demands or in the Rejoinder. At the commencement of his arguments, after making a few general observations, Mr. Kulkarni summarises his demands as follows : (1) that an employee must be considered to be on duty when he is at the disposal of his employer and that, therefore, no distinction should be made between the hours of employment and the hours of work; (2) that the maximum hours of work should be limited to 8 hours per day and 48 hours per week; (3) that the Essentially Intermittent classification should be abolished; (4) that all the hours during which an employee is travelling spare on duty should be considered to be his duty hours; (5) that the averaging clause for overtime payment should be abrogated; (6) that overtime payment should be made on the basis of weekly hours for non-fixed rosters and on the basis of daily hours for fixed rosters; (7) that the rate of overtime payment should be twice the normal rate of pay; (8) that certain classes of railway servant should be classified as Intensive; (9) that the hours of duty at a stretch of the running staff should be limited to

12 from signing-on to signing-off; (10) that certain staff included in the Excluded Category should be excluded therefrom; (11) that the leave reserves should be maintained on the basis of leave entitlements, and (12) that the ratio of rest-givers must be 1 : 6 and not 1 : 9. At this stage of arguments, Mr. Mahadevan interrupted and submitted that not only the pleadings of the Federation were vague in regard to some of the above matters but even the points which Mr. Kulkarni suggested for decision were still vague and did not particularise with precision the exact demands which the Board was called upon to meet. He submitted that it was necessary that this should be done at that stage in order that he might be in a position to raise objections, if he so chose, on the ground that some of the points urged for decision did not fall within the purview of the Term of Reference or that they did not arise from the pleadings. Mr. Mahadevan submitted that he did not raise any objection to evidence being led on certain topics because it was not clear at that stage whether those topics had or had not some bearing, though remote, on one or the other of the specific demands. He contended that, if those topics were to be made the subject of specific demands, he should not be prevented from objecting on the ground that those matters did not arise for decision at all. Mr. Kulkarni readily agreed to the suggestion to frame issues and submitted 14 issues for decision.

These issues were as follows :

- (1) With a view to give reasonable conditions to employees, it has become necessary :
 - (a) to reduce working hours;
 - (b) to revise classification of many a category;
 - (c) to re-draft rules regarding periodic rest and overtime.
- (2) 8 hours a day and 48 hours a week should be accepted as the maximum limits of daily and weekly hours of work. Those limits both daily and weekly should be lesser in the case of those whose duties are strenuous involving continuous physical and mental exertion. Essentially Intermittent classification should be abolished.
- (3) The time that an employee is at the disposal of the Railways should be taken as hours of work;
- (4) The time involved in handing over/taking over/preparation for work/getting the tools ready, should be included in the period of work.
- (5) Time spent on travelling should fully be reckoned as duty.

- (6) Work done beyond 48 hours a week or lesser in the case of those whose duties are strenuous involving continuous physical and mental exertion, should be compensated by paying overtime at double the normal rate of pay.
- (7) In the case of constant rosters statutory limit should be laid down for a day and any work done beyond that limit should be compensated.
- (8) Averaging the hours of work over a period should be done away with.
- (9) Adequate leave reserves be provided on the basis of leave entitlements etc.
- (10) Rest Givers to be provided at the ratio of 1 : 6.
- (11) Weekly rest should follow the daily rest period.
- (12) Duty at a stretch of the running staff should be restricted to 12 hours from signing-on to signing-off.
- (13) The hours of work of the employees including those of the following categories whose duties are strenuous involving continuous physical and mental exertion, should be lesser than 8 hours a day and 48 hours a week, in other words, classified as Intensive :
 - (a) All Section Controllers.
 - (b) All ASMs, sub-ASMs, Cabin ASMs, Yard Masters, Train Clerks, Shunting Jamadars, Points Jamadars, Pointsmen and other staff doing transportation duty at Junction stations.
 - (c) All SMs, ASMs and Class IV staff at roadside stations where more than 16 trains are worked.
 - (d) Engine crew of Mail and Express trains.
 - (e) Wireless Operators.
 - (f) Signallers employed on continuous heavy circuits.
- (14) Cases of some of the Excluded staff—'C' Class Gatemen, Saloon Attendants and Supervisory staff, to be reviewed.

6.3. However, at the end of his arguments, Mr. Kulkarni specified his demands more precisely and, in the process, either gave up, recast, realigned or modified some of the demands embodied in the above issues. Thus, the demands of the Federation finally took the following shape :

- (1) HER should be revised to ensure to the workers work of 8 hours a day and 48 hours a week;
- (2) the hours of employment should be taken as the time an employee is at the disposal of his employer;

- (3) time involved in handing-over and taking-over should be reckoned as a period of duty;
- (4) time spent on travelling spare on duty should be treated as a period of duty;
- (5) averaging period over a week in the case of staff having constant rosters (non-running staff) should be done away with;
- (6) EI classification should be totally abolished;
- (7) maximum of hours of work for Intensive workers should be 6 per day and 36 per week;
- (8) Intensive Classification should be given to the following workers :
 - (i) Section Controllers;
 - (ii) all staff performing transportation duty at big junction stations, that is junctions where trains are broken or formed or originate or terminate or those where goods and marshalling yards are attached, and those where considerable number of trains are worked;
 - (iii) all SMs, ASMs and Class IV staff at roadside stations where more than 16 trains pass each way on a single line section, that is where saturation point is reached operationally;
 - (iv) Wireless Operators, and
 - (v) Signallers employed on heavy circuits.
- (9) the hours of Telephone Operators and Deputy Chief Controllers should be reduced keeping in view that their work fulfils all ingredients for Intensive classification and that, even if all those ingredients are not satisfied, their hours of work should be reduced to a period lesser than that for the Continuous workers;
- (10) (i) Gatemen "C";
 - (ii) Saloon Attendants;
 - (iii) Bungalow Peons; and
 - (iv) Chowkidars at reservoirs and rest houses etc.

should be excluded from the Excluded category and they should be classified as Continuous workers;
- (11) work done by Intensive workers beyond 36 hours a week and that done by the rest beyond 48 hours a week should be compensated by overtime payment at double the rate;
- (12) work done beyond daily limit by those who are borne on constant rosters should be treated as overtime;
- (13) leave reserves should be provided category-wise to check undue overtime, keeping in view the general leave entitlements of the employees;

- (14) one clear day of weekly rest should be given in a period of 7 days besides the daily rest and in order that this may be ensured, rest-givers should be employed in the ratio of 1 : 6;
- (15) duty at a stretch of the running staff should be limited to 12 hours from signing-on to signing-off, retaining the present proviso which requires the running staff to give two hours' notice for being relieved.

6.4. From the summary of the latest specified demands, it may be noticed that whilst Mr. Kulkarni has retained Issues Nos. 2, 3, 4 and 5 intact, he has either modified, re-aligned, recast and even given up all or some of the demands embodied in the rest of the issues.

6.5. At the commencement of his arguments, Mr. Mahadevan stated that the demands of the Federation in regard to the ratio of rest-givers and leave reserves were wholly irrelevant and were not within the purview of the Reference; that his objection to the demand regarding re-classification of the employment of certain categories of railway workers is partial inasmuch as the Railway Board has no objection to the existing classification of such categories of railway employees being re-considered on its own merits on the basis of the existing definitions of Continuous, Intensive, EI and Excluded classes of employments, and that its objection to the rest of the demands of the Federation is total. Mr. Mahadevan, however, recognised, in the course of his arguments, the force of a few of the above demands and fairly made a few concessions which will be noticed at their appropriate places.

6.6. It will be observed that the Term makes a reference to the Hours of Employment Regulations, shortly called HER and hereafter referred to also as HER. HER consist of (1) Chapter VI-A of the Indian Railways Act, 1890 (hereafter called the Act) entitled "Limitation of Employment of Railway Servants" containing sections 71-A to 71-H; (2) Rules made by the Central Government called Railway Servants (Hours of Employment) Rules, 1961 under section 71-E of the Act (hereafter called the Rules simpliciter); and (3) Subsidiary Instructions, issued by the Railway Board (hereafter called the Subsidiary Instructions) supplementing the Act and the Rules. The Act and the Rules have statutory force but the Subsidiary Instructions have no such force. The Subsidiary Instructions must conform to the Act and the Rules. However, since the Subsidiary Instructions are issued by the highest authority on railways, they have subject to the latter limitation, a binding force too.

6.7. The Term of Reference excludes from its purview railway servants employed in workshops falling under the definition of "factories" in the Factories Act. This is so because section 71-B of the Act says that Chapter VI-A shall not apply to railway servants to whom the Factories Act applies. Section 71-B also exempts railway servants governed by the Mines Act, 1952, and the Merchant Shipping Act, 1958, from the provisions of that Chapter. In view of the above provisions, it is clear that HER S/1 RB/72—10.

do not apply also to railway servants governed by the above Acts. Consequently, parties agree that the present Reference does not apply to the above mentioned railway servants also.

6.8. The original demand in regard to overtime payment was that the same should be made on a weekly basis. However, in the course of its Rejoinder, the Federation, mainly basing itself upon the contentions urged by the Railway Board in its reply, put forward an alternative demand in regard thereto. The Federation contended that, in view of what the Railway Board had stated in its reply, payment should be made for duty performed overtime on a daily basis in the case of continuous rosters and it may be paid to the running staff and other staff who travel on duty on weekly average basis. In its original demand, the Federation claimed Intensive classification for the following railway servants : (1) all section controllers; (2) all ASMs, sub-ASMs, cabin ASMs yard masters, trains clerk, shunting jamadars, points jamadars, pointsmen and other staff doing transportation duty at junction stations; (3) all SMs, ASMs and class IV staff at road-side stations where more than 16 trains are worked; (4) engine crew of all mail and express trains; (5) wireless operators; and (6) signallers employed on continuous heavy circuits. In Issue No. 13 submitted by Mr. Kulkarni, this claim for Intensive classification has been repeated. However Mr. Kulkarni led evidence to show that telephone operators and deputy chief controllers also fulfilled the conditions for Intensive classifications. Such a claim was not included in Issue No. 13. At the end of his arguments, Mr. Kulkarni definitely gave up the claim for classification in respect of the following employees : (1) all SMs, ASMs and class IV staff at road-side stations where more than 16 trains are worked, and (2) engine crew of mail and express trains. Mr. Kulkarni submitted that, though in the Statement of Demands, he had mentioned the staff at road-side stations where more than 16 trains were worked, meaning that the total number of trains in a tour of 24 hours were 16, in fact, his intention was to include only staff on those stations where more than 16 trains were worked each way on single line. It was on this ground that Mr. Kulkarni did not press the claim of the above class of railway workers. As regards the demand for Intensive classification of engine crew of mail and express trains, Mr. Kulkarni submitted that he would press their claim before the Third Pay Commission and, as he intended to do so, he did not press the claim before this Tribunal but he did so without prejudice to his right to press such claim before the Third Pay Commission. In spite of the above clarification, Mr. Kulkarni, in the course of his arguments, tried to press the claims of (1) telephone operators, (2) deputy chief controllers, and (3) line clear staff, *i.e.* SMs, ASMs including platform and cabin ASMs employed at stations with 16 trains each way on single line section, for being classified as Intensive workers. On an objection being raised by Mr. Mahadevan that no such specific claim was made in the course of the pleadings and that these categories of railway servants were not included even in the issues submitted by Mr. Kulkarni, Mr. Kulkarni, basing himself on certain general observations contained in the Statement of Demands, submitted that

the case of the above categories of railway servants should be considered, in view of the special nature of their employment, for lesser hours of work than the standard 8 hours' daily and 48 hours' weekly limits. For this stand, Mr. Kulkarni relied upon the following contention in the Statement of Demands at page 24 thereof: "and even if it is assumed that this is not feasible at the moment due to larger national aspects, the NFIR firmly holds that general standard hours of work accepted for industrial workers in this country, viz. 8 hours a day and 48 hours a week, should be the maximum limit for hours of work on the railways for all categories of employees, *provision being made, however, for lesser hours of work in cases of those staff in whose case the duty is strenuous and involves continuous physical and mental exertion.*" On the above ground, Mr. Kulkarni submitted that even if the cases of the above staff could not be considered for Intensive classification, the hours of work of the following staff should be fixed at a level in-between the hours of work fixed for Intensive and those fixed for Continuous workers, viz., (1) telephone operators, (2) deputy chief controllers, (3) line clear staff including cabinmen working at stations where 16 trains operate each way on single line in a cycle of 24 hours, and (4) signallers working on non-heavy circuits. Both in the original demand and in Issue 13(b), the claim of trains clerks to be classified as Intensive was pressed. However, at an advanced stage of his arguments, Mr. Kulkarni gave up the claim of train clerks for Intensive or intermediate classification.

6.9. Under the circumstances mentioned in the previous paragraph, the claims for Intensive classification of only the following staff arise for decision in the present Reference : (1) section controllers; (2) ASMs, sub-ASMs, cabin-ASMs, yard masters, shunting jamadars, points jamadars, pointsmen and other staff doing transportation duties at big junction stations; (3) SMs, ASMs and class IV staff at stations where more than 16 trains pass each way on a single line, i.e. where, operationally, saturation point has been reached; (4) wireless operators, and (5) signallers employed on continuous heavy circuits. Moreover, subject to certain objections raised by Mr. Mahadevan, the claims of the following staff will arise for decision as to whether their hours of work should be less than those of Continuous workers, even though they are not classified as Intensive workers : (1) telephone operators, (2) deputy chief controllers, (3) line clear staff including cabinmen at stations with more than 16 trains working thereon each way on single line in a cycle of 24 hours, and (4) signallers working on non-heavy circuits. It may be noticed that demand mentioned as (3) is an alternative demand.

Demands ultimately pressed

6.10. From the above summary and for reasons given hereafter the demands of the Federation which require decision are as follows :

- (1) that daily and weekly hours of employment for railway servants governed by HER should be fixed at 8 and 48 respectively;

- (2) that the hours of employment should be taken as the time an employee is at the disposal of his employer;
- (3) that the time involved in handing-over and taking-over should be included in the period of duty;
- (4) that the time spent on travelling spare on duty should also be treated as such;
- (5) that EI classification should be abolished;
- (6) that the averaging clause in HER should be abolished in regard to non-running staff;
- (7) that overtime payment should be made on daily basis in regard to staff borne on fixed rosters, and on weekly basis in regard to those borne on non-fixed rosters;
- (8) that one clear day of weekly rest should be given to all workers in a period of 7 days and to implement this, rest-givers should be provided in the ratio of 1 : 6;
- (9) that the duty at a stretch of the running staff should be limited to 12 hours from signing-on to signing-off;
- (10) that certain categories of staff should be classified as Intensive;
- (11) that the hours of work of certain staff, even if they cannot be classified as Intensive, should be fixed for a period which is less than that fixed for Continuous workers; and
- (12) that (i) gatemen employed at gates classified as 'C', (ii) saloon attendants, (iii) bungalow peons, and (iv) care-takers of rest houses and reservoirs etc. should be excluded from the Excluded category and classified as Continuous.

6.11. Before undertaking a detailed discussion of the rival contentions on the merits or otherwise of the claims of the Federation, it will be useful to make a few observations regarding (1) the history of HER, (2) their main provisions, (3) their general features, (4) Washington Convention No. 1, (5) Geneva Convention No. 14, and (6) parallel Indian legislation on some of the topics relevant to this Reference, since Mr. Kulkarni heavily relies on the same.

History of HER

6.12. The genesis of HER is to be found in the Indian Railways (Amendment) Act, 1930 which, Mr. Kulkarni submits, was enacted as the then Government of India intended to implement the provisions of Washington Convention No. 1 of 1919 which was ratified by the Government of India in 1921 and Geneva Convention No. 14 of 1921 which was ratified by the same Government in 1923. Rules were made under the Indian Railways (Amendment) Act in 1931 and Subsidiary Instructions were issued from time to time. HER thus came into existence in 1931. In 1946, Mr. Justice Rajadhyaksha (hereafter called the Adjudicator) was appointed as Adjudicator to adjudicate upon the disputes between

nine Indian Government Railway Administrations and their workmen, *inter alia*, in regard to the provisions contained in the HER, 1931. The Adjudicator submitted his Report in 1947 and fixed time limits varying from 6 months to 2½ years for implementation of his recommendations. He made several recommendations and supported them with detailed reasons. One of his recommendations suggested amendments to the Railways Act. In 1951, the Railway Board, without waiting for the suggested amendments to the Act, framed the Railway Servants Hours of Employment Rules, 1951, embodying therein a number of recommendations made by the Adjudicator. In 1956, the Railways Act was amended by the introduction of Chapter VI-A. In 1961, the Central Government framed Rules under section 71-E of the Act which were published under the title "Railway Servants Hours of Employment Rules, 1961", superseding "Railway Servants Hours of Employment Rules, 1951". The Railway Board issued Subsidiary Instructions on 4-1-1962. The present HER is the result of the recommendations of the Adjudicator. Because of this historical background, naturally, the Railway Board relies heavily upon the reasons given by the Adjudicator for rejecting some of the claims then made by the Federation. On the other hand, for the same reason, the Federation controverts the Adjudicator's reasoning and subjects it to a severe scrutiny on its own merits and also in the light of the subsequent and parallel Indian legislation and international thinking on the subject.

Broad features of HER

6.13. HER divide railway employment into four categories, three of them for fixing the hours of work of railway servants to be included HER, and the fourth for excluding them therefrom. These employments are designated as (1) Continuous, (2) Intensive, (3) Essentially Intermittent, and (4) Excluded. An employment is said to be Continuous except when it is Excluded or has been declared to be Essentially Intermittent or Intensive. An employment is said to be Intensive when it is declared to be so by the prescribed authority on certain specified grounds. An employment is said to be Essentially Intermittent when it is declared to be so by the prescribed authority, also on certain specified grounds. The grounds on which these employment are to be declared Intensive or Essentially Intermittent need not be mentioned at this stage. They will be mentioned hereafter at their appropriate places. An employment is Excluded if the worker employed therein belongs to one of the categories mentioned in the Act or in the Rules. Thus, Railway servants are classified as Continuous, Intensive, Essentially Intermittent or Excluded according to the category they are employed in. The Act limits the hours of work for all railway servants except those classified as Excluded and enjoins periodic rest for all railway servants other than Excluded workers except those excluded under sub-clause (iv) of clause (c) of section 71-A, *i.e.* those class IV staff who are specified as Excluded by the Act. Different ceilings of hours of employment have been fixed for different categories of railway servants. The ceiling for a Continuous servant is 54 hours a week on an average in a month; that for an Intensive servant is 45 hours a week on an

average in a month and that for an Essentially Intermittent servant is 75 hours a week. These hours are known as statutory hours of employment. However, though the Act has fixed the above limits, the rostered hours of employment of each of the above categories are always less than the statutory hours. The difference in the rostered hours amongst the same category of railway servants is due, in a large measure, to the fact that some of them are called upon to perform preparatory and/or complementary duties. For some Continuous workers, rosters have been fixed at 48 hours a week, for some others at 50 hours and 40 minutes a week and, in the case of a few, at 52, 54 or even 55 hours a week. However, the time taken for handing-over and taking-over charges, in the cases of those employees where such processes are necessary, does not come to be necessarily mentioned in the relevant rosters. If the time for taking-over or handing-over is less than 15 minutes, it is not reflected in the rosters at all. If the time is 15 minutes or more but is less than 45, half an hour more is included in the rosters of Continuous workers and, in the case of Intensive and EI workers, a note is made in the roster to the effect that a credit of 3 hours shall be given to the worker concerned every week. In those cases where the time taken for such purposes is 45 minutes or more, in the case of Continuous workers, rosters are prepared for 9 hours a day. In the case of Intensive workers, as a general rule, the rostered hours do not exceed 42 hours a week, each worker being rostered for 6 hours a day. However, for these workers also, the time limit for handing-over and taking-over is calculated in the same manner as in the case of Continuous workers and their rosters are prepared in accordance with such calculation. For Essentially Intermittent workers, the rosters are prepared for duties of 12 hours a day and 72 hours a week. In this case also, rosters are prepared for longer hours not exceeding 75 hours a week for those railway servants who are required to attend duties earlier for taking over charges or who are required to be detained for handing over such charges. Broadly speaking, the rostered hours of Continuous workers range from 48 to 51 per week and in a few cases upto 55; those of Intensive workers from 42 to 45 per week and those of EI workers from 72 to 75 per week. However, HER do not prescribe a ceiling for daily hours of work. Except in the case of Essentially Intermittent workers, they do not prescribe even a fixed day for weekly rest. The statutory limits are based upon the principle of averaging. Therefore, though the statutory and rostered hours are fixed as aforesaid, a railway servant is liable to be called upon to perform his duty for any number of hours a day, subject to the limitation that the total weekly hours calculated in the above manner do not exceed the statutory limit prescribed as above and subject to the principle of long-on which prescribes the maximum number of continuous duty hours for a day and the principle of short-off which prescribes the minimum rest which a worker must be given before he can be called upon to work in the next shift. There are two further obligations to which a railway servant is subject in regard to his hours of duty. The main over-riding obligation is that prescribed in section 71-F which provides that, notwithstanding anything contained in Chapter VI-A

of the Act or the Rules, a railway servant is not authorised to leave his post of duty, where due provision has been made for his relief, until he has been relieved. Under the circumstances, a railway servant whose reliever does not turn up is bound to remain on duty until he happens to be relieved. Sub-section (4) of section 71-C of the Act authorises the prescribed authority to provide for temporary exemptions of railway servants from the provisions of the statutory limits of hours. This can be done only if the prescribed authority is of the opinion that certain conditions are satisfied. The conditions mentioned are that, in the opinion of the prescribed authority, such exemptions "are necessary (1) to avoid serious interference with the ordinary work of the railway, or (2) in cases of accidents, actual or threatened, or (3) when urgent work is required to be done to the railway or rolling stock, or (4) in any emergency which could not have been foreseen or prevented, or (5) in the case of exceptional pressure of work". When a railway servant is called upon to perform duty under the circumstances mentioned in sub-section (4) aforesaid, the period of such duty is said to be overtime duty. In that contingency, the proviso to sub-section (4) says that the servant concerned shall be paid for overtime "at not less than $1\frac{1}{2}$ times his ordinary rate of pay". From these provisions, it is quite clear that a railway servant is liable to perform overtime, but, this can be done only under the circumstances mentioned in sub-section (4) extracted above. However, no ceiling is prescribed for such overtime.

6.14. The net result of the above discussion is as follows : (1) that HER prescribe two kinds of limits for weekly hours of work (i) statutory and (ii) rostered, and (2) that they do not prescribe a ceiling of daily work.

6.15. Thus, a railway servant can be called upon to perform overtime duty beyond the statutory limit only if certain conditions are satisfied but no ceiling is prescribed for such overtime work, either daily or weekly. HER make detailed provision for computation of overtime. Overtime is not earned by a railway servant so long as his weekly hours calculated as aforesaid do not exceed the statutory limit. However, later on, as the result of an agreement between the Railway Board and the Federation, a modification has been introduced as regards Continuous and Intensive workers. Under the agreement, overtime becomes payable as regards these two categories if overtime is rendered beyond a two-weekly average. The result is that a Continuous worker earns overtime if he renders duty for more than 108 hours in a fortnight and an Intensive worker if he renders duty for more than 90 hours in a fortnight. However, even though this is so, the daily overtime rate is not computed on a bi-weekly rate of pay but is calculated on one-monthly rate of pay. As regards an Excluded railway servant, as already indicated, there is no ceiling on his hours of employment. The result is that an Excluded railway servant is liable to perform duty for 24 hours and no rosters are prepared for him. Thus an Excluded worker can never earn overtime. HER do not prescribe daily period of rest to any worker including Excluded worker.

6.16. As regards periodic rest, the staff is divided into (1) Essentially Intermittent workers, (2) Loco and Traffic running staff, (3) other running staff, and (4) the rest. The Essentially Intermittent workers are given a periodic rest of 24 consecutive hours in a week, including a full night. The Loco and Traffic running staff, instead of being given a weekly rest as provided for the others, may be given four periods of rest of not less than 30 consecutive hours each or five periods of rest of not less than 22 consecutive hours each over a month, which rest must be at the headquarters and should always include a full night in bed, meaning rest between 10 PM and 6 AM. The other running staff has to be given the same periods of rest in a month as provided for the Loco and Traffic staff, with the modification that, in their case, a portion thereof may be away from the headquarters and/or at intervals of more than ten days. As regards the rest of the staff, they must be given rest of not less than 30 consecutive hours in a week, except Excluded category. Amongst Excluded workers, only the class IV staff of the type mentioned in para 6.13 above are entitled to a periodic rest of not less than 48 consecutive hours each month or 24 consecutive hours each fortnight.

6.17. Rosters are either fixed or non-fixed, the latter also called cyclic. Where a railway servant's duty does not involve working in shifts, the servant is borne on fixed rosters. Where, however, such duty involves shifts, the servant is borne on cyclic rosters. The shifts are either two or three. In the case of running staff, however, they are ordinarily borne on links, no rosters being prepared for them. Their hours of duty begin and end according to the scheduled time-table according to which the trains which the servants concerned will operate leave originating stations and arrive at destination stations. In the case of the running staff, they are liable to be called for duty at any time and their duty hours begin from the time they sign-on at the place of origin of duty and end at the time when they sign-off at the place of destination.

6.18. HER also provide for split shifts. A split shift means a shift which is punctuated in the daily tour of duty by breaks during which the employee is free to leave his post of work and which breaks, therefore, are not treated as parts of hours of employment. The rules on the subject are that spells of duty should not exceed three in all, the number of breaks being limited to two. Any break of less than an hour is ignored and included in the duty hours and, as far as possible, the spread-over is to be limited to 16 hours, provided that the rest between 10 PM and 6 AM is not broken and to 14 hours if such rest is so broken. HER further provide that, in the case of three spells of duty, quarters should invariably be provided for staff to take rest and if the spells of duty are two, the concerned staff should be given some preference in the allotment of quarters. In the case of Continuous servants, HER prescribe that if their places of residence are beyond 1.6 kilometres from their places of duty, then, in the case of split rosters, 7 hours' duty should be considered as equivalent to 8 hours' duty.

6.19. HER also make provision for travelling spare on duty. The rules on the subject are that the first four hours of travelling in the case of all workers are not considered to be hours of duty and the whole of the balance is considered to be hours of duty for Essentially Intermittent workers and two-thirds thereof for the rest of the workers.

6.20. To mollify the rigour of the obligation to render duty continuously for a number of hours, instructions have been issued in HER to avoid, as far as is practicable, a long-on or a short-off. A long-on is a period of duty over 8 hours in the case of Intensive workers, over 10 hours in the case of Continuous workers and over 12 hours in the case of Essentially Intermittent workers. A short-off is a period of daily rest which is less than 12 hours in a roster of 6 hours' duty; which is less than 14 hours in a mixed roster of 6 and 8 hours; less than 10 hours in the case of Continuous workers and less than 12 hours in the case of Essentially Intermittent workers. HER provide for avoidance of continual night duty, meaning employment during any part of the night from 10 PM to 6 AM. They prescribe that, for employment which involves performance of continual night duty, attempts should be made so that men employed in night duty alternate with those working in day shift, to the extent possible, and if adequate relief is not possible by this method, the men affected should be transferred after completion of one or two year's service to some other station where they will not be subject to continual night duty. HER prescribe that normal performance of continual night duty by the running staff should not exceed six nights at a stretch and, in the case of non-running staff, attempt should be made to provide at least one break in continual night duty in ten days in addition to the period of weekly rest. HER also prescribe that running duty of running staff should not ordinarily exceed 10 hours at a stretch and that such staff should be entitled to claim relief after 12 hours provided they give two hours' notice for relief to the Control. For the purpose of computing duty at a stretch, time is calculated from the actual departure of a train. HER also prescribe that such staff should not ordinarily be allowed to work for more than 14 hours at a stretch from signing-on to signing-off and that they should not ordinarily be away from headquarters for more than 3 or 4 days at a stretch.

6.21. Mr. Kulkarni draws special attention to some features of HER which he calls salient features and he offers the following general comments in regard to those features which, he submits, must be borne in mind in determining the issues raised for decision : (1) that HER differentiate between hours of employment and hours of work and thus militate against the main principle now firmly established, namely, that an employee is on duty so long as he is at the disposal of his employer ; (2) that the above concept of differentiation is also at the root of the classification of railway servants into Essentially Intermittent and Excluded, so much so that periods of action and inaction have been made the basis for different kinds of classification; (3) that the above principle has been violently disregarded in excluding certain hours of time for handing-over and taking-

over and in disregarding the first four hours of travelling spare on duty in the case of all classes of railway servants and one-third of the balance in the case of Continuous and Intensive workers; (4) that no provision is made for daily rest interval; (5) that no limit is prescribed for daily overtime work, except the provision for weekly rest ; (6) that the employer himself has been allowed the power to exempt from the statutory limit of work; (7) that overtime is computed over statutory limits and not over rostered limits; (8) that overtime is paid for not on daily basis but, in case of Essentially Intermittent workers, on weekly basis and, in case of Continuous and Intensive workers, on two-weekly basis; (9) that the principle of averaging has been introduced for all classes of railway servants, that that principle is mainly used in practice to exploit railway labour and that the burden arising from the peculiar circumstances existing on railways, instead of being wholly borne by the administration or being equitably shared by the administration and the labour, is being wholly thrown on workers; and (10) that overtime rate is only $1\frac{1}{2}$ times the ordinary rate of pay whereas it should be twice that rate. I propose to consider the above features of HER and the comments of Mr. Kulkarni at their appropriate places.

Broad features of parallel legislation

6.22. Mr. Kulkarni draws my attention to some of the relevant provisions of the following Statutes. The Indian Factories Act, 1948, prescribes 9 hours of work as the daily maximum; a compulsory rest interval of half an hour after every five hours of work; total daily spread-over of $10\frac{1}{2}$ hours; 48 hours of work as the weekly maximum and a compulsory weekly holiday for a whole day. The Act gives power to the Government to exempt factories from the above provisions but that power itself is circumscribed by enacting that the maximum daily hours of work shall not exceed 10, that the total spread-over shall not exceed 12 and that the maximum hours of overtime shall not exceed 50 for any one quarter. The Act also provides that overtime shall be paid at twice the ordinary rate of pay. The Act in terms, not only prohibits the employer from employing a worker for more than the prescribed hours but also prohibits him from allowing the worker to work overtime beyond the prescribed limits. The Mines Act, 1952, provides 8 hours as the maximum daily hours of work for the under-ground workers with no spread-over margin and 9 hours for the over-ground workers with a total spread-over of 12 hours; 48 hours as the maximum weekly hours for both kinds of workers and enjoins that overtime shall be paid at twice the rate of ordinary pay. The Plantations Labour Act, 1951, prescribes a compulsory daily rest interval of half an hour after every five hours of work, a total spread-over including rest of 12 and 54 as the maximum weekly hours. However, the National Labour Commission recommends that the hours of work for plantations labour should be reduced to 8 per day and 48 per week. The minimum Wages (Central) Rules, 1950, prescribe 9 and 48 as the maximum daily and weekly hours. The Motor Transport Workers Act, 1961, prescribes 8 hours as the daily

maximum with a compulsory rest interval of half an hour after every five hours. The various States have passed Shops and Establishments Acts. The pattern prescribed by such legislation is that of maximum daily hours of 8 or 9 with a compulsory rest interval of one or half an hour after certain intervals, with a total spread-over ranging from 10½ to 12 and maximum weekly hours of 48.

6.23. The pattern disclosed by the above Statutes is (1) that, except in the case of miners, a uniform standard period of work is prescribed for all workers; (2) that they do not distinguish between hours of employment and hours of work; (3) that the maximum daily hours do not exceed 8 and in some cases 9; (4) that the maximum weekly hours do not exceed 48 except in the case of plantations labour but even in that case, the National Labour Commission recommends 48 hours as the maximum weekly hours; (5) that they all provide for a compulsory daily rest interval of, in a majority of cases, half an hour after a continuous duty of 5 hours; (6) that they all prescribe a definite limit on total overtime which can be exacted in a week; (7) that they all prescribe compulsory day of weekly rest; (8) that no work beyond 10 hours on any day can be taken even on payment of overtime and (9) that whenever exemption has been provided for from the maximum ceiling hours, the power has always been given to the Government and not to the employer.

Washington Convention

6.24. That brings me to the two International Conventions on which great reliance is placed by Mr. Kulkarni. The Hours of Work (Industry) Convention, 1919, (hereinafter called Washington Convention), being Convention No. 1, was adopted by the General Conference of the International Labour Organisation in 1919. The Conference was convened for adoption of "certain proposals with regard to the application of the principle of 8-hours day or of 48-hours week." The Convention contains 22 Articles, the most important of which for our purpose is Article 10. That Article may be divided into two parts. The first part states that "In British India, the principle of a 60-hour week shall be adopted for all workers in the industries at present covered by the Factory Acts administered by the Government of India, in mines, and in such branches of railway work as shall be specified for this purpose by the competent authority." The first part further provides that any modification of the above limitation made by the competent authority "shall be subject to the provisions of Articles 6 and 7 of this Convention". The second part provides that "In other respects, the provisions of this Convention shall not apply to India but further provisions limiting the hours of work in India shall be considered at a future meeting of the General Conference." From this Article, it is quite clear that the Convention did not apply the principle of 8-hour day and 48-hour week to industries in British India including railways. However, it applied the principle of 60-hour week to some industries including some branches of railways which were to be specified by a competent authority. Therefore, it is quite clear

that Washington Convention was not applicable to Indian Railways generally but a modified version thereof was to be applied to some specified branches of railways. However, there is no material on record to show whether the competent authority contemplated by the Article ever specified branches of railways to which the principle of 60-hour week was to be applied, nor is any information available on the subject. The second part of Article 10 further envisages a consideration of the subject of limiting the hours of work at a future meeting of the General Conference. There is no material also on record to show whether any such consideration took place at any subsequent meeting of the General Conference, nor is there any information available on the subject. The Adjudicator observes in his Report that the provisions of the above Convention did not apply to British India. In view of the above facts, I propose also to proceed on the same footing. On this finding, it is possible to urge that the provisions of Washington Convention need not be considered as relevant for deciding any industrial dispute in India. Even if the provisions of Washington Convention were applicable in the sense that they were intended to be adopted for application to India, the provisions thereof bind only the high contracting parties and they cannot be made the basis for resolving an industrial dispute directly. Whilst this is the legal position, in my opinion, it is useful to consider the provisions of Washington Convention for more than one reason. In the first instance, there is no doubt that the Convention embodies the collective wisdom of an International Organisation held in high esteem all over the world. Secondly, the provisions of the Convention have been adopted by a large number of countries and, as appears from subsequent Conventions, have stood the test of time for more than half a century. Thirdly, there is reason to believe that a number of Statutes in India on the subject of hours of work have adopted, broadly speaking, the principles underlying Washington Convention and that even the Indian Railways (Amendment) Act of 1930 was more or less inspired by its provisions. Fourthly, the Adjudicator has taken the provisions of the Convention into consideration in framing his Report and there is no doubt that a large number of his recommendations are also inspired by the same document. Fifthly, the Railway Board does not disown the document or denounce at least the main principle contained therein as inapplicable to Indian conditions. In fact, in its reply, the Board's contention has been that, more or less, HER are based upon the principle of 8 hours a day and 48 hours a week and that even the departures therefrom are justified by one or the other provisions of the Convention. Under the circumstances, though the provisions of the Convention are not directly applicable for resolving the present dispute, a consideration and understanding of the basic principles thereof is valuable as the provisions of the Convention should have a high persuasive value and should be of considerable assistance in resolving the present dispute. For the above reasons, I propose to consider the provisions of Washington Convention more in depth as was done by both the parties to this dispute.

6.25. For the purpose of the present Reference, out of 22, the first six Articles are the most relevant.

The first Article defines the term "industrial undertaking". That term includes "transport of passengers or goods by...rail...". Therefore, the Convention applies to railway undertakings. Article 2 provides that the working hours of persons employed in an industrial undertaking shall not exceed 8 in the day and 48 in the week. This principle applies whether an industrial undertaking is public or private. The Article also enumerates certain persons to whom and the undertakings to which the principle is not to be applied. Firstly, persons holding positions of supervision or management or employed in a confidential capacity are excepted. This appears to be the precursor of one of the categories enumerated in the definition of the term "Excluded" in the Act. The exemption is total. Secondly, it exempts from the application of the limit of 8 hours a day, industrial undertakings where, by law, custom or agreement, the hours of work on one or more days of the week are less than 8, but it does not exempt them from the limit of 48 hours a week. The Article states that, in the above contingency, the limit of 8 hours a day may be exceeded on the remaining days of the week, provided certain further conditions are satisfied, one of the conditions being that total daily limit should not exceed one hour. Thus, under this part of Article 2, workers of the undertakings mentioned therein can be called upon to work upto 9 hours a day on certain days of a week, provided that the weekly limit of 48 hours is not exceeded. The third exception is in regard to persons employed in shifts. The exception states that it is permissible to employ persons in excess of 8 hours on any one day and 48 hours in any one week, provided the average number of hours over a period of three weeks or less does not exceed 8 per day and 48 per week. This exception introduces the principle of averaging. The exception is applicable only to those undertakings where workers are employed in shifts. Whilst it permits deviation from the main principle of 8 hours a day and 48 hours a week upto a period of three weeks, it enjoins that the average during the period of the determined number of weeks not exceeding three shall not exceed 8 hours per day and 48 hours per week. Article 3 provides that the limit of daily and weekly hours of work may be exceeded in certain cases "only so far as may be necessary to avoid serious interference with the ordinary working of the undertaking." The cases mentioned are "accident, actual or threatend, or in case of urgent work to be done to machinery or plant or in case of *force majeure*." This Article is reminiscent of sub-section (4) of section 71-C of the Act in which similar cases are enumerated for enabling the competent authority to grant temporary exemptions from the ceiling of weekly hours of work and which sub-section, in addition, enumerates the case of exceptional pressure of work which is not mentioned in this exception but which finds a place in clause (1)(b) of Article 6 to be noticed hereafter. Article 3 does not prescribe any upper limit, either daily or weekly, for the hours of work of those who are governed by it. Therefore, under this Article, in the circumstances mentioned therein, a worker can be called upon to work any number of hours a day or a week. Article 4 provides that the limits of 8 hours a day and 48 hours a week may also be exceeded "in those processes which are required, by reason of the nature of the

process to be carried on continuously by a succession of shifts, provided that the working hours shall not exceed 56 in the week on the average and that the regulations of the hours of work shall not affect any rest day which may be secured by the national law to the workers concerned in compensation for the weekly rest day." It will be noticed that this Article is applicable only to the workers who are engaged in processes which are to be carried on continuously by a succession of shifts. This Article does not prescribe an upper daily limit but it prescribes an upper weekly limit of 56. The Adjudicator opines that this Article is not applicable to railways or any processes therein. This opinion is in consonance with the opinion of the International Organisation and of the international world. The Railway Board also does not contend that the above Article is applicable to railways. Under the circumstances, there is no doubt that the principle underlying this Article does not apply to the facts of the present case. Article 5 provides that, in exceptional cases where it is recognised that the provisions of Article 2 cannot be applied, and *only in such cases*, agreements between the workers and the employers' organisations providing for longer daily limits of hours of work may be given the force of regulations, if the Government so decides. However, even in such cases, the average number of hours per week over the number of weeks covered by any such agreements are not to exceed 48. This Article permits the daily and weekly hours to be exceeded but, by introducing the principle of averaging, enjoins that the weekly limit of 48 hours over an agreed number of weeks shall not be exceeded. There is authority for the proposition that this Article is applicable to the working of railways. Such an opinion was expressed by the International Labour Office in reply to a query addressed by the Swiss Government (Vide Note 202 on pages 202-203 of the International Labour Code, 1951, Vol. I). Both the sides are agreed that this Article applies to running staff on railways. However, there is a controversy as to whether this Article does or does not apply to other branches of railways. In my opinion, the language used in the Article justifies the view that it is applicable also to other branches, provided the conditions mentioned therein are satisfied.

6.26. From the above discussion, it is clear that Article 2 with all its Exceptions and Article 3 apply to railways, that Article 4 does not so apply and that Article 5 applies to running staff on railways. The latter Article may also apply to other branches of railways, provided the conditions mentioned therein are satisfied. Therefore, if the principles underlying Washington Convention deserve to be applied to Indian conditions, there is no doubt that the Indian Railway workers should not be called upon to work for more than 8 hours a day and 48 hours a week, except the following categories of railway workers : (1) persons employed in a supervisory or managerial or confidential capacity, to whom the principle of 8 hours a day and 48 hours a week is not to be applied at all. (2) workers employed in shifts, in which case the daily and weekly limits of hours may be exceeded in any one week provided that the average number of hours in a period of three weeks or less shall not exceed 8 hours per day and 48 hours per week, and

(3) such workers whose hours of work in one or more days of the week are less than 8 may be called upon to work on the remaining days of the week for more than 8 hours but not exceeding 9.

6.27. That brings me to Article 6. As this Article has been the subject matter of a heated controversy in these proceedings, it will be useful to reproduce the Article in full :

“Article 6

1. Regulations made by public authority shall determine for industrial undertakings:—

- (a) the permanent exceptions that may be allowed in preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of an establishment, or for certain classes of workers whose work is essentially intermittent;
- (b) the temporary exceptions that may be allowed, so that establishments may deal with exceptional cases of pressure of work.

2. These regulations shall be made only after consultation with the organisations of employers and workers concerned, if any such organisations exist. These regulations shall fix the maximum of additional hours in each instance, and the rate of pay for overtime shall not be less than one and one-quarter times the regular rate.”

The Article enables the public authority to make exceptions by regulations. The exceptions which can be made may be permanent and/or temporary. The permanent exceptions may be made in regard to (a) preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of an establishment, or (b) for certain classes of workers whose work is essentially intermittent. The temporary exceptions may be made in regard to “exceptional cases of pressure of work”. Clause (2) of Article 6 provides that the above regulations shall be made only after consultation with the organisations of employers and workers, if such organisations exist. That clause also enjoins that such regulations shall fix the maximum of additional hours in each instance and that the rate of pay for overtime shall not be less than one and one quarter times the regular rate. Now there is not much of a controversy as regards the interpretation of clause (1). There is no doubt that that clause enables permanent exceptions to be made in the case of preparatory, complementary or essentially intermittent work and temporary exceptions in exceptional cases of pressure of work. However, a controversy can arise as to the exact connotations of the expressions “preparatory”, “complementary” and “essentially intermittent”. Some of the countries which ratified, and some even which did not ratify the Convention, sought the opinion of the International Labour Office for the connotations of the above expressions. Some of the queries put related to railways and the answers thereto may be of assistance at a later stage. I do not propose to enter into a consideration of the above topics at this stage.

6.28. A controversy arises as to whether clause (2) is applicable to sub-clause (b) of clause (1) only or is applicable to sub-clause (a) also. I propose to consider this subject at this stage. Some of the principles for construction of a Convention are now well-known and may be mentioned. The National Tribunals are competent to construe provisions of Conventions but they should be careful in doing so. They should try to reach the spirit behind the provisions and not merely their letter. Opinions expressed by the International Labour Office have no binding force, as the Office has no special authority to interpret the texts of Conventions. Though this is so, it has been also stated that “When an opinion given by the Office has been submitted to the Governing Body and published in Official Bulletins and has met with no adverse comment, the Conference must, in the event of its subsequently including in another convention a provision identical with or equivalent to the provision which has been interpreted by the Office, be presumed, in the absence of any evidence to the contrary, to have intended that provision to be understood in the manner in which the Office has interpreted it.” (Vide Note No. 4 on page 802 of the International Labour Code, 1951, Vol. I).

6.29. In my opinion, clause (2) is applicable to both the sub-clauses (a) and (b) of clause (1). Clause (1) begins by stating that regulations made by public authority shall determine for industrial undertakings permanent and temporary exceptions. Clause (2) begins by saying that these regulations shall be made after consultation with the concerned organisations and further says that such regulations shall fix the maximum additional hours in each instance. Therefore, the regulations which are referred to in Clause (2) must necessarily be the same regulations which are referred to in clause (1) and as clause (1) refers to regulations not only in regard to temporary exceptions but also in regard to permanent exceptions, I have no doubt whatsoever that clause (2) is intended to cover not only regulations in regard to temporary exceptions but also regulations in regard to permanent exceptions. My attention is drawn to the conclusion arrived at by the London Conference of Ministers in regard to the above subject referred to in Note 209 at page 207 of the International Labour Code, 1951, Vol. I. The conclusion says that it is agreed that the obligation as to the rate of pay for overtime imposed by the Convention applies only to additional hours contemplated by Article 6(1)(b). I do not think that this conclusion is useful in determining the controversy. It is quite clear that the London Conference does not deal with the interpretation of clause (2) of Article 6. It concerns itself with the question of the obligation for payment of overtime and proceeds to conclude, on an assumption of agreement, that that obligation is only in regard to the additional hours contemplated by Article 6(1)(b). That is a question, the answer to which depends upon the interpretation of the last sentence in clause (2) and not on the question as to whether (2) is or is not applicable to sub-clause (a) of clause (1) of Article 6. I propose to give my own interpretation of that last sentence just in a moment and, for the reasons given therein, I cannot accept the assumption of the London Conference of Ministers that the

relevant part of clause (2) obliges the employer to make overtime payment in regard to work done during the additional hours fixed under clause (2). However, even if it is held that the London Conference of Ministers accepted the view that clause (2) is applicable only to sub-clause (b) of clause (1) and not to sub-clause (a) thereof, for the reasons already given, I cannot agree with that interpretation. Such an interpretation will be incorrect also for another reason. The first part of the last sentence in clause (2) says that the regulations shall fix the maximum of additional hours "in each instance" and the reference necessarily is to the instances mentioned both in sub-clause (a) and (b) of clause (1).

6.30. The second controversy is in regard to signification of the second part of the second sentence in clause (2) which states that "and the rate of pay for overtime shall not be less than one and one-quarter times the regular rate." The submission of Mr. Kulkarni is that, under the above part of the second sentence, employers are bound to pay overtime for all additional hours of work during which workers are employed by virtue of both the sub-clauses. In support of this argument, Mr. Kulkarni, whilst contending that the view of the London Conference of Ministers is wrong that clause (2) is inapplicable to sub-clause (a), seeks to derive support from their conclusion that the payment for overtime for additional hours of work is obligatory. I am unable to agree with the above interpretation. In my opinion, the relevant part of clause (2) is not intended to determine the circumstances under which obligation to pay overtime arises. The intention is only to provide for the rate of overtime payment and not to determine the circumstances when overtime is to be paid. The Conference was neither concerned nor seized with that topic at all. All that the Convention was concerned with was the determination of the hours of work including the additional hours of work under certain circumstances. That august body, when deciding the question of additional hours of work, also thought it necessary or advisable to provide as to what provision it should make regarding the rate of overtime, if after the provision of additional hours of work, overtime work happens to be taken from the workers concerned, and the Conference decided that, in such contingencies, the rate of overtime payment shall not be below a certain minimum fixed by them. In my opinion, that is the only scope of the above part of clause (2). If Mr. Kulkarni's contention were true, it is quite clear that all the additional hours of work fixed under clause (2) must be regarded as overtime work. In my opinion, not only there is no justification for this view, but, such a view would defeat the very purpose for which Article 6 is enacted in regard to intermittent work. The additional hours of work are permitted in the case of intermittent employment because there are periods of inaction in the employment and they are so permitted in order that such employment be equated to normal employment of 8 hours a day and 48 hours a week. If this is the theory on which the provision for additional hours of work is based in regard to intermittent employment, it would defeat the provision in regard to such employment if the additional hours were to be regarded as overtime work. In that

view of the matter, an intermittent worker, though putting in the same hours of equivalent work as a non-intermittent worker, will be receiving overtime payment for doing work for a period which is equivalent to the work of a non-intermittent employee. Article 6 is an exception to Article 2 and must be construed as such. The intention behind Article 6 is to enable the employer to demand more hours of work from the employee than justified by the principle enunciated in Article 2. As to whether such additional hours, in given circumstances, are or not overtime work must depend upon an independent provision as to what is overtime and provision in regard to such matter may be made either by contract between the parties or by the law of the land. Therefore, in my view, the correct interpretation of the latter part of clause (2) is that, when regulations provide for additional hours of work in the instances mentioned in clause (1), the regulations must not only determine the maximum of additional hours of work, but, must also provide that, as and when overtime is taken and is to be paid, the rate of overtime shall not be less than $1\frac{1}{4}$ times the regular rate. In this regard, my attention has been drawn to the conclusion of the London Conference of Ministers, already referred to, and the opinion expressed by the International Labour Office on 11th May 1920 on a query made on behalf of the Swiss Government referred to in Note 209 on page 207 and printed on page 208 of the International Labour Code, 1951, Vol. I and the opinion expressed in the Report of the Committee of Experts on Application of Conventions and Recommendations, 1967, in paragraph 243 at page 249. In my opinion, neither the London Conference of Ministers nor the International Labour Office nor the Committee of Experts was called upon to interpret the last sentence in clause (2) aforesaid. All these bodies have expressed their opinions, on an assumption that the last sentence aforesaid creates an obligation on the employer to pay overtime. They were never called upon to decide that question. The question they were called upon to express their opinion on was limited to whether the assumed obligation arose only in regard to additional hours of work done under sub-clause (b) alone or also under sub-clause (a) of clause (1). The London Conference of Ministers expressed the view that it arose under sub-clause (b) only, the International Labour Office expressed the view that it arose under both sub-clauses (a) and (b) and the Committee of Experts expressed the view that the context suggested that permanent exceptions were excluded from the obligation to make payment at a higher rate. In my opinion, in expressing the above views, all the aforesaid bodies naturally omitted to consider the true interpretation of the last sentence of clause (2) and assumed that it contained an obligation to pay overtime. If the assumption is correct, then, there is no doubt whatsoever that the view expressed by the London Conference of Ministers and the Report of the Committee of Experts would be incorrect and that expressed by the International Labour Office could be correct for the reasons already given by me. But, in my opinion, the correct interpretation of Article 6 is that it only fixes the rate for overtime in those cases where overtime happens to be taken where additional hours of work are fixed in regard to permanent and temporary exceptions under the Article,

but it does not define when overtime work can be said to have been taken and an obligation to pay overtime can be said to have arisen. Whilst on this topic, I may mention that subsequent Conventions have made specific provisions in regard to this topic, some of which appear to be inconsistent with the conclusions which would be arrived at if Mr. Kulkarni's contention were to be accepted. For example, Convention No. 30, which deals with regulations of hours of work in commerce and offices, specifically excludes permanent exceptions from payment of overtime. It is true that the practice in different countries varies as to whether preparatory or complementary work may be regarded as overtime work. According to the Committee of Experts, in a number of countries, such work is treated as overtime but, at the same time, it is quite clear that, in some other countries, such work is not so regarded. The question as to whether preparatory and complementary work should be regarded as overtime is a different topic altogether and may be considered on its own merits. But, what is of importance is that Mr. Kulkarni has not been able to cite an instance of a single country where additional hours of work done in intermittent work are regarded as overtime. In my opinion, the interpretation contended for by Mr. Kulkarni must be rejected on this weighty ground that, in that contingency, the Conference must be taken to have decided that all additional hours of work determined for intermittent work should be regarded as overtime. For the reasons already given, such conclusion ill accords with the intentment of the Convention, its language and the purpose underlying the Article.

6.31. Article 6 itself does not provide what the maximum additional hours of work shall be. They are left to be determined by the public authority concerned. Therefore, the Convention itself does not offer any guidance in this matter and the other Conventions or recommendations of the International Labour Organisation and the Indian legislation on the subject will have to be looked into for the purpose of determining as to what should be the maximum additional hours of work in those cases where Article 6 applies.

Conclusions on Washington Convention

6.32 For the above reasons, I have come to the following conclusions on Washington Convention :

- (1) that the maximum daily and weekly hours for workers in railway industry are fixed at 8 and 48 respectively;
- (2) that it permits additional hours of work for preparatory or complementary or essentially intermittent work and in cases of pressure of work;
- (3) that it requires such maximum additional hours also to be fixed;
- (4) that, in the latter case, when additional hours of work are fixed, if the worker is required

to be paid overtime, the rate of overtime shall not be less than $1\frac{1}{4}$ times the regular rate;

- (5) that it permits daily limit to be exceeded in the case of running staff on railways and also in the case of the other staff which satisfy the conditions laid down in Article 5, provided weekly average of 48 hours is not exceeded by applying the principle of averaging;
- (6) that it permits the above daily and weekly limits to be exceeded as regards railway workers employed in shifts if the average number of hours over a period not exceeding three weeks does not exceed 8 hours per day and 48 hours per week;
- (7) that if hours of work on one or more days of the week are less than 8, then, the daily limit of hours may be exceeded on the remaining days of the week by not more than one hour; and
- (8) that the above ceiling limits would not apply to persons employed in supervisory, managerial or confidential capacity.

6.33. The foregoing discussion does not mean that the above conclusions must necessarily be applied to Indian Railways without considering other relevant factors which may be applicable. The above provisions of the Convention have a persuasive value and may be used for regulating the hours of work of Indian Railway workers, after giving due consideration to the conditions and circumstances relevant to Indian Railways.

Geneva Convention No. 14

6.34. The Geneva Convention No. 14 of 1921 presents no difficulty. It applies to industrial undertakings which term includes a railway industry. The crucial Article is No. 2. That Article provides that the whole of staff employed in any industrial undertaking, public or private, or in any branch thereof, shall, except as otherwise provided for by other Articles, enjoy in every period of seven days a period of rest comprising of at least 24 consecutive hours; that the period of rest shall, wherever possible, be granted simultaneously to the whole of the staff of each undertaking and that the same shall, wherever possible, be so fixed as to coincide with the days already established by the traditions or customs of the country or district. This Convention was ratified by the Government of India in 1923. Article 4 enables each Member of the Convention to authorise total or partial exceptions including suspensions or diminutions from the provisions of Article 2, special regard being had to all proper humanitarian and economic considerations and after consulting responsible associations of employers and workers wherever such exists. It says that such consultation shall not be necessary in the case of exceptions which have already been made under existing legislation. I agree with Mr. Kulkarni that the principle underlying the above Convention is that one full calendar day's rest must be provided in a period of seven days.

General principles governing hours of work

6.35. Since the provisions of Washington Convention are not binding and, at best, have only a persuasive force, it is better, in deciding this Reference, to bear in mind the principles which should govern determination of the question of daily and weekly hours. This subject has been amply and exhaustively dealt with by the Adjudicator in Chapter VI of his Report, pages 41 to 55, paragraphs 135 to 175, and generally speaking, I agree, with respect, with all that the Adjudicator says on the subject. In the early days of industrial development, hours of work were, almost in every case, dictated by employers and though they were supposed to be in the realm of contract, workers had hardly any voice in the matter. As a result, in the early days of *laissez-faire* policy of States, invariably, the labour was exploited for obtaining the best financial results for the employer. In course of time, specially because of the weakness of the labour in dealing with the employer, exploitation reached such a point that, initially, the labour itself, specially through collective bargaining, tried to assuage the evil of exploitation as far as they could and, at later stages, the social conscience of the people was roused to such a pitch that not only the social workers but even the State was compelled to take interest in the matter. As a result of all these developments, labour legislation came into the field and, at least, in the latter part of the nineteenth century, thought began to be devoted as to how best the evil of exploitation of labour should be prevented or mollified. As a result of this social and legislative intervention, a number of principles came to be evolved for resolving the problem. The Adjudicator considers the historical aspect of this matter in the beginning of the chapter referred to above. Amongst other factors which he mentions as deserving consideration are (1) that the labourer should not be treated as a commodity but as a human being, (2) that the labourer should be encouraged to feel that he is a partner in the common enterprise, (3) that the work exacted from the labourer should not reach the point of fatigue, (4) that the labourer should have sufficient leisure to attend to domestic, social and civic obligations, (5) that work itself is a tonic for the body and mind and that rest or relaxation is best enjoyed after a hard day's honest work, (6) that whilst the labourer can reasonably expect the hours of work to be fixed on the above considerations, it is the bounden duty of the labourer to give his best to the industry in which he is engaged, (7) that whilst drawing upon the analogy of Western countries, the differences of climate, habits, customs and economic opportunities should be borne in mind. In addition to the above factors, regard must also be had to such considerations as the place which the industry concerned occupies in the economy of the country, the repercussions which the fixation of hours of work would have, not only on the industry itself, but on the other industrial complex of the country, specially when the industry concerned happens to be a public utility undertaking, in the operation of which the other industries are vitally interested and on the efficiency or otherwise of which the development of the industrial complex as a whole depends. Other factors which may be taken into account are the directive

principles embodied in the Constitution, the fact that the nation is now wedded to the ideal of a socialistic pattern of society and the trend of industrial legislation on the same subject as revealed by the various enactments governing other industries in the country, as also the international trend on the same subject.

6.36. Although it is easy to enumerate the factors which should govern labour legislation, the real difficulty arises when an attempt is made to translate the above principles, which in themselves appear to be sound, into actual practice. All the above principles do not converge to the same end and some of the principles appear to be in competition with others. Under the circumstances, the real task which arises before an industrial adjudicator is, how to reconcile the above principles and balance them in such a way that an overall application of the above principles leads to the welfare of the society as a whole, including the welfare of the industrial worker. It is quite clear that none of the above factors is static and an interplay of different factors is bound to change not only from country to country but even from time to time in the same country. Above all, the above principles must be related to and made to subserve the interests of the individual industry in regard to which the hours of work have got to be fixed. However, at the same time, it is useful to bear in mind that some of the above factors are of such vital importance that their sacrifice in the context of a particular case may not be justified except in very rare and extreme cases and in the interests of the nation as a whole. As a result of the upsurge of the principle of equality, it is necessary to bear in mind that a worker is not merely one of the commodities serving an industry, but, is essentially a human being and that, no measure should be tolerated which affects his health, his domestic, social and civic obligations and a situation should not be tolerated where, in comparison with his other co-citizens, he suffers conditions and opportunities of work which are not normally regarded as healthy and proper in his country as a whole.

Special features of railway working

6.37. Before mentioning the specific factors which should be borne in mind in determining the question of the hours of work for railway industry, it will be useful to quote the following passage from the Report of the Inland Transport Committee, Seventh Session, Geneva, 1961, Chapter II, at page 33 :

"The complex structure of railway undertakings, the tremendous variety of jobs in the industry, and the fact that they must operate continuously day and night, have obliged the legislatures of different countries to draw up extremely comprehensive and sometimes complicated regulations dealing with hours of work on the railways. Such regulations do not confine themselves to fixing general norms; in most cases they establish highly varied procedures for the application of these norms to the various types of staff, particularly the methods of calculating and evenly distributing hours of work and rest. As was noted by the authors of a report prepared

by the International Labour Office before the War, 'the resulting regulations are very complex, in fact the most complex of all hours of work regulations.'"

Amongst the specific factors may be mentioned the following : (1) that railways, unlike many other industries, operate all over the country at innumerable points; (2) that railway industry is a continuous process and its main wing, the operational staff, must work round the clock all the days of the week; (3) that consequently night duty is inherent in railway service; (4) that periodic rest which is given in industries to workers on one and the same day must necessarily be distributed amongst railway staff, specially in regard to those members of staff who are engaged in transportation service which is the main work of railways; (5) that railway industry is really a complex of several industries or occupations and railways do a variety of jobs, each different from the other, and therefore presents a wide spectrum of diverse occupations; (6) that all these occupations and jobs must work in unison with one another and in an integrated way in order to perform railway service in an efficient manner; (7) that some operations on railways are uncertain and the time for their performance cannot be predicted with certainty or exactitude. This is specially so in regard to the running of goods trains; (8) that railways, unlike other transport services, must have a permanent way and must have definite points or stations and consequently each point must be adequately manned with certain basic staff; (9) that overtime is one of the constant features of railway service; (10) that though a large number of railway workers are borne on cyclic rosters, there are also workers who are borne on fixed rosters; (11) that there are some workers, specially amongst running staff, for whom no fixed or cyclic rosters can be prepared and their hours of work, to a large extent, are dependent upon the administration being able to run trains according to scheduled time-tables; (12) that railways are a public utility concern and, therefore, the profit motive is not the sole incentive; (13) that railways have an important place in the economic and social life of the country and their efficiency or otherwise has important repercussions on other industries, public and private; (14) that therefore, whilst considering any change, the effect thereof on all other sectors of life must be carefully weighed and considered; (15) that railways have built up traditions of their own and some of these may have become so deep-rooted that a violent and sudden uprooting thereof may not be desirable; and (16) that safety of public is an important aspect of railway administration and that, in framing rules for hours of work, it must be borne in mind that hours of work should not be so fixed as to make workers vulnerable to mistakes and accidents and that workers should not be subjected to such mental strain as to affect their responsibility towards members of public.

Principles governing hours of work on railways

6.38. However, I do not agree with the proposition that because of the above special and unique features of railway service, it is not possible to evolve standard

daily and weekly hours of work for railway service. In my opinion, all HERs were based on the hypothesis and are a sufficient proof of the fact that standard daily and weekly hours of work can be fixed for an ordinary worker engaged in railway service. This is inherent in the concept of a Continuous worker. If once the norm for hours of work of such a worker can be fixed, the variations in regard to other workers can be determined on their own merits. Therefore, in my opinion, an endeavour should be made, in the first instance, to fix what hours of work an ordinary and efficient railway worker can put in and what a prudent railway administration can expect from him. Once such a norm is determined, the variations therein may be worked out on the basis of the nature and intensity of work and other relevant factors involved in each branch of railway work.

6.39. To resolve the problem set out above, the Railway Board has contended for the application of one or two principles which, it contends, have been used to solve such a problem. The principles are those of co-efficiency and longer hours of work. According to the principle of co-efficiency, the actual hours of work are evaluated in the context of normal hours of work and a figure arrived at which would put workers on a par with one another in the matter of hours of work. The second principle is that, when a worker is engaged in lighter work than ordinary work, he may be called upon to work for longer hours to compensate the employer for the light nature of work or when the worker is engaged in more strenuous work, he may be permitted to work for a lesser period than the ordinary period of work to compensate him for the intensive nature of the work actually done by him. It appears from the reply of the Railway Board that one or the other of these principles or methods is in vogue in the country's main industries. On principle, I do not find any reasonable ground for not testing the actual result arrived at in particular cases with reference to one or the other of the above principles or methods. I propose to consider the application of these two principles or methods in resolving the present dispute when considering the question of classification of workers.

6.40. On the basis of the materials which have been placed before me, I do not find much difficulty in fixing the hours of work for a normal and efficient railway worker. I have no doubt whatsoever that the present HER are based, more or less, on the principle of 8 hours a day and 48 hours a week. In sub-para (1) of paragraph 180 of this Report, Vol. I, the Adjudicator holds that the daily hours of work of a Continuous worker will be 8 which, in his opinion, "is a fair limit in the case of men working at reasonable pressure." The Adjudicator, however, concludes that, in the case of Continuous workers, employed in a non-continuous process, the hours of work may be "a little more than 8." The reason which he has given for this conclusion is that the work which is carried on in a workshop or factory, which the Bhole Committee had held would not be unfair for factory workers, was perceptibly higher than that of gangmen, artisans and other labour in several

branches of railways. This view has been controverted by the Federation and I propose to consider this matter a little later. But the point which is to be noted is that, in the opinion of the Adjudicator, the workers employed in a continuous process who work in three shifts, and by far such workers being engaged in transportation and allied works, form the bulk of railway workers, this is a fair limit of work at reasonable pressure. Secondly, the Railway Board has also, in its reply, substantially accepted the principle of 8 hours a day. In fact, they claim credit for doing this, notwithstanding Article 10 of Washington Convention. The Adjudicator has, however, recommended longer weekly hours for reasons which I propose to examine just in a moment. The Railway Board has supported these reasons. The Adjudicator also accepts and introduces the principle of averaging for determining the total number of weekly hours. I propose to examine the reasons given by the Adjudicator for this also a moment later, but, subject to an examination of the validity or otherwise of the principle of averaging, I have no doubt that the principle of 8 hours a day has been accepted by the Adjudicator. The modern trend is not only in favour of 8 hours a day but in favour of 48 hours a week also. Washington Convention has adopted that principle. The recent international trend is in favour of a further reduction of weekly hours. Convention No. 47 of 1935 adopts the principle of 40-hour week. In Recommendation No. 116 of the General Conference of the International Labour Organisation, convened at Geneva and held on 6th June, 1962, it has been stated that "Where normal weekly hours of work are either 48 or less, measures for the progressive reduction of hours of work in accordance with paragraph 4 should be worked out and implemented in a manner suitable to the particular national circumstances and conditions in each sector of economic activity." In para 4, it is recommended that the normal hours of work should be progressively reduced to 40 hours a week, a principle set out in Convention No. 47 of 1935. The Bhore Committee recommends 45 hours a week, saying that the daily hours should be 8 on the first five week days and 5 hours only on Saturdays. The modern trend of Indian legislation is also in the direction of 48 hours a week. In almost all industries for which legislation has been undertaken on the subject, the weekly ceiling prescribed is 48 hours except in the case of plantations labour where the weekly hours prescribed are 54. However, the National Labour Commission recommends the reduction of weekly hours from 54 to 48 for the plantations labour. In addition to the above factors, there is another important point which must be borne in mind so far as railway workers are concerned. Whereas in the rest of the industries, provision is made for a compulsory rest interval of half an hour after continuous duty of 5 hours, no such interval is provided for railway workers, possibly because, at least, in the case of employees employed in continuous process, this cannot be done without detriment to safety in railway working. Another factor is that, whereas in other industries a ceiling limit for daily overtime and also for weekly overtime has been prescribed, no such ceiling has been prescribed for railway workers, probably for the reason that railway work must run

round the clock continuously without interruption. Therefore, whereas 48 hours a week has been prescribed for the labourers engaged in other industries, it is apparent that even if 48 hours a week are fixed, the railway worker will still be suffering from certain handicaps and that, in any case, the handicaps are bound to be much more if the weekly hours are fixed at 54. I may mention that the Federation does not demand that a daily rest interval or a ceiling for daily or weekly overtime work should be fixed for railway workers. Under the circumstances, in my opinion, the Federation has made out a strong case for the acceptance of the principle of 8 hours a day and 48 hours a week for railway workers.

Examination of reasons for higher ceiling of weekly hours

6.41. That brings me to the reasons given by the Adjudicator for recommending a higher ceiling of weekly hours. The Adjudicator expresses the opinion that railway work is not as arduous as factory work and, therefore, a railway worker can work for some time more than 48 weekly hours fixed for a factory worker. I am unable to agree with this view for more than one reason. In the first instance, as already shown, 48 hours a week is applied, at least subsequent to the Report of the Adjudicator, to certain other industries including employees in shops where ordinarily work is not harder than work rendered by a railway worker. In the second instance, in my opinion, the comparison between a railway worker and a factory worker is not fair. The Adjudicator compares the work of only a few railway workers with that of a factory worker. He compares the latter's work with such railway workers as gangmen, artisans and other labour in the other branches of railway only and draws a general conclusion therefrom adverse to all railway workers. The class of railway workers picked up for comparison is neither representative nor does it constitute the main bulk of railway workers. Moreover, the definition of "factory worker" as given in clause (e) of section 2 of the Factories Act shows that it does not merely include a worker doing mechanical operation in the factory proper itself but it includes also such workers as chowkidars, time-keepers, etc., and staff not engaged in the manufacturing process but attached to the factory itself, for whom also 48-hours a week principle has been adopted. Thirdly, the above reasoning does not take note of the fact that, on railways also, there are some categories of workers whose work can be as arduous as that in a factory. Railway work consists of (1) transportation, (2) commercial, and (3) engineering. The railway complex is engaged in such activities as those found carried on in workshops, sheds, depots, power houses, commercial establishments, permanent way and transportation services. The workers in all these establishments cannot be treated alike, nor is it correct to say that the work done by all the above workers is necessarily less arduous than that of a factory worker. In Term of Reference No. 6, I have had occasion to consider the work of a gangman. Having regard to what I have observed there, I am unable to agree with the Adjudicator that the work of a gangman is less arduous than that of a factory worker. The

work done in power houses, workshops, sheds and depots is more or less of the same nature as that done in a factory and, but for the Railways Act, the staff of these branches would be governed by the provisions of the Factories Act. Similarly, but for the Railways Act, staff of the commercial establishments would be governed by the Shops and Establishments Acts of the various States. Similarly, but for the Railways Act, a majority of staff of the permanent way would be governed by the Minimum Wages Rules and, also but for the Railways Act, staff engaged in transportation work would be governed by the Motor Transport Workers Act. In all these cases, the transportation staff would compulsorily be provided for half an hour's rest per day at an interval of every 5 hours and the maximum number of daily hours could not have exceeded 9 per day. Moreover, there is staff on railways, such as telephone and wireless operators, who render more or less the same duties as those done by the corresponding staff of the P & T Department, where the hours of work are different from those fixed under HER. The second reason given by the Adjudicator is that intensity of work on railways is not the same as that in some other industries. I am unable to agree with this reasoning also. It is true that, at some roadside stations, intensity of work is less, but that to a certain extent is obviated by giving commercial duties to some of the staff concerned. Moreover, in my opinion, if intensity is less for some workers, it can be compensated for by the principle of co-efficiency or longer hours, but it is not proper to truss all railway workers together in one group simply because some railway workers have light work or periods of inaction or relaxation. For this purpose, some other method or principle may be adopted to bring them on a par with normal work. But so far as the main category of Continuous workers is concerned, in my opinion, it is not correct to say that intensity of work of a continuous worker is less than that of a worker in any other industry. In any case, as I shall presently show, such an approach is not consistent with one of the principles with which I am in agreement and which I propose to discuss a little later, that principle being that an employee must be considered to be on duty so long as he is at the disposal of his employer.

6.42. The Adjudicator has given also another reason for recommending longer hours which is based on a practical difficulty. He says that, since railway is a continuous industry, a considerable number of workers have to be engaged in three shifts and that some workers will necessarily have to come a little earlier or go a little later and without such earlier arrival or later departure, they or their relievers will not be able to perform their duties efficiently and well. Therefore, he says that, if every such worker were to work for 8 hours a day, no margin will be left for him for doing the aforesaid kind of work. Quite a large number of rosters have been prepared on railways for weekly hours amounting to 50 hours 40 minutes or 51 hours and, in some cases, even as many as 54 and 55 hours on the ground that the concerned workers are required for the above kind of work for periods varying from 15 minutes to an hour over their daily quota of work. I am

unable to agree that, because of this necessity, the rosters of all railway servants should be prepared for more than 48 hours, irrespective of an examination on merits whether, in fact, an additional period of work is or is not necessary in each individual employment. A roster prepared on such an *ad hoc* basis is bound to offend against one of the main principles for which the Federation contends and which principle, as I shall presently show, I propose to accept. Moreover, it is not proper to demand extra work from each and every worker simply because some workers are required to do preparatory and/or complementary work. As I shall presently show, such a worker can be dealt with on a more rational basis and in accordance with international thinking on the subject. Therefore, I am unable to agree with the Adjudicator that such rosters can be justified on the above ground. If rosters for longer hours are prepared for all workers on such an *ad hoc* basis, workers are bound to suffer in the matter of overtime—a result which is wholly unjustified.

6.43. Mr. Mahadevan justifies the existing rosters, *i.e.* the current hours of work, under Article 5 of Washington Convention and bases his arguments on Note No. 202 at pages 201-202 of the International Labour Code, 1951, Vol. I, under Article 239 corresponding to Article 4 of Washington Convention. The Note at page 202 says that the International Labour Office was asked on behalf of the Swiss Government whether Article 4 was applicable to transport and communication undertakings, the operation of which is continuous, and that Office advised on 11th May 1920 that the Article was not so applicable to such undertakings. In support of this conclusion, the Office mentioned that special dispositions had been made in Article 5 to facilitate application of the Convention to working of railways instead of the exceptions indicated in Article 4. From this Note, Mr. Mahadevan infers that Article 5 is the only article applicable to railways. I agree with Mr. Mahadevan that Article 5 does apply to railways, but I cannot agree with him that Article 2 does not apply to railways at all. In my opinion, in regard to railways, both Articles 2 and 5 apply. Article 2 is the general Article which is applicable to railways as a whole and the question whether the exception embodied in Article 5 does or does not apply to railways depends upon the fulfilment of the conditions laid down in that Article. Article 5 begins by stating that it is to be applied only in exceptional cases "where it is recognised that the provisions of Article 2 cannot be applied" and further emphasises that fact by stating that the Article is to be applied "only in such cases." Secondly that Article expressly authorises longer hours in regard to daily limit of work over a longer period of time by introducing the principle of averaging, and enjoins that the average number of hours worked per week over an agreed number of weeks "shall not exceed 48." Therefore, Article 5 itself contains internal evidence that Article 2 is applicable to those cases in regard to which it is an exception. Article 5 further enjoins that, even if the principle of averaging is to be introduced, the average number of working hours shall not exceed 48 during the

agreed average number of weeks, thereby emphasising that the principle of 48 hours an average week is applicable to railways. Therefore, I cannot agree with the submission of Mr. Mahadevan that Article 5 is applicable to railways as a whole *de hors* Article 2. In my opinion, a conjoint reading of Articles 2 and 5 is that, normally, Article 2 is applicable to railways and that, in exceptional cases where the conditions laid down in Article 5 are applicable, longer hours of work in a week may be taken, provided that the average number of hours during the average period does not exceed 48. It follows that the standard limit of 8 hours a day and 48 hours a week applies to railways, though that limit may be relaxed to the extent mentioned in Article 5 if the conditions mentioned in that Article are satisfied. Mr. Mahadevan also relies upon Article 5 of Convention No. 67 which deals, *inter alia*, with regulations of hours of work in road transport. I do not think that that Article helps Mr. Mahadevan. On the contrary, in my opinion, that Article enjoins the application of the principle of 48 hours a week in the case of transport industry too. Clause (1) of Article 5 specifically says that the hours of work of persons to whom the Convention applies shall not exceed 48 in the week. Clause (2) thereof says that the competent authority may authorise higher weekly limits of hours for persons who ordinarily do considerable amount of subsidiary work or whose work is frequently interrupted by periods of mere attendance. The expression "subsidiary work" has been defined in Article 4, clause (c), and though, that definition may contain concepts which are not exactly identical with all the concepts of preparatory and complementary work, the fact cannot be denied that clause (2) of Article 5 is an exception to the principle enunciated in clause (1). Therefore, I cannot also agree with Mr. Mahadevan that hours of work in regard to road transport undertakings are designed on the basis that such undertakings are either intermittent employment or an employment in which preparatory and/or complementary work is totally involved. Under the circumstances, I am not convinced that railways must be treated on the basis that they involve intermittent work or that the employment is one in which preparatory or complementary work is always necessarily involved. Mr. Mahadevan also relies upon the observations made by the Inland Transport Committee, Seventh Session, 1961, at page 33 of its Report, which observations have already been extracted by me in paragraph 6.37 above. I am unable to read those observations as justifying the view that work on railways is to be regarded as intermittent and that the principle of 8 hours a day and 48 hours a week cannot be applied to them. Mr. Mahadevan also relies upon the observations made in the Report of the Committee of Experts on the Application of Conventions and Recommendations, 1967, in paragraph 174 at page 234. I am also unable to read these observations as an authority for the proposition that work on railways is to be treated as intermittent. In my opinion, the literature relied upon by Mr. Mahadevan only justifies the propositions that railways are one of those industries to which exceptions to the main principle of 8 hours a day and 48 hours a week are to be engrafted and that such engrafting is justified on the ground that some branches of

railways involve intermittent, preparatory and/or complementary work or that there are some branches on railways where the main principle cannot be applied.

6.44. Mr. Mahadevan's further contention is that though the Adjudicator is fully conscious of the fact that the principle of 8 hours a day and 48 hours a week is the governing principle, he designs higher weekly hours because of the peculiar features of railway work. These features have been mentioned by me in paragraph 6.37 above. Mr. Mahadevan specially relies on the fact that uniformity of working hours is not feasible on railways and that working of railways is such that periods of inaction are inbuilt in the same. Mr. Mahadevan contends that the Adjudicator has permitted higher weekly hours to provide for these contingencies. I do not agree. I am not convinced that the Adjudicator has justified the higher weekly hours for the above reasons. As already stated, the Adjudicator has permitted higher weekly hours on a comparison of railway work with factory work and because of the practical difficulty referred to by me in paragraph 6.41 above.

6.45. Mr. Mahadevan's argument suffers from some other infirmities also. Though it is correct to say that there are some branches of railways where employees cannot be fully engaged, it is not correct to say that this is so in regard to railways as a whole. I am not convinced that such a situation obtains in a majority of its branches or that it involves a large majority of railway workers. This follows from the fact that, out of about 11 lac railway workers, only 1.35 lac are classified as EI workers. Partial or considerable periods of breaks in duty or periods of complete or partial inaction are, more or less, confined to road-side stations and only a few branches of railways and there is no doubt that they do not constitute majority of railway workers. On the contrary, in my opinion, the presumption under the Act that all railway workers are Continuous militates against the view propounded by Mr. Mahadevan. Even assuming that there is intermittent and similar other kind of work involved on railways on a large scale than in other industries, it will be improper to fix longer hours for all employees on a uniform basis without attempting to find out the periods of inactivity, so that the principle of employment for longer hours can be applied justly to workers. Moreover, when Mr. Mahadevan is asked to explain on what basis additional six hours per week are justified in the case of all railway servants, Mr. Mahadevan says that this is done on an *ad hoc* basis. I do not think that a scheme evolved on such *a priori* considerations is justifiable in principle. In my opinion, therefore, the correct approach is to apply the principle of 8 hours a day and 48 hours a week to railways as a whole and to discover those branches of employments which fall under the exceptions laid down in Article 5 or Article 6 of Washington Convention or any other just and proper exceptions which may be applicable to each-case. For the above reasons, I have come to the conclusion that the opposition of the Railway Board to the application of the principle of 8 hours a day and 48 hours a week and their support to the existing hours of work of 54 hours in a week for railways as a whole are not justified.

Distinction between Hours of work and Hours of employment

6.46. That brings me to the question as to what are the hours of work, *i.e.* when the period of work begins and when it ends. One of the main grievances of the Federation is that HER are based on the notion that hours of employment are different from hours of work. Instances which are quoted are (1) that the time for handing over and taking over is ignored in some cases altogether and, in some others, partially; (2) that a certain portion of time taken for travelling spare on duty is altogether ignored and, in some others, the subsequent portion thereof is not fully paid for; (3) that the classifications of Excluded and Essentially Intermittent workers are based also on the above notion that the hours for which no work is taken from the above workers are not to be paid for, though they are at the disposal of the employer.

6.47. In my opinion, the contention of the Federation is correct that an employee is on duty so long as he is at the disposal of the employer at the latter's instance. This view has the backing of a considerable body of international opinion and is supported by current parallel legislative trend. The above principle is implicit in Washington Convention. Though that Convention does not define the expression "Hours of work", the daily and weekly ceilings prescribed therein are based upon the view that hour of duty commences when the employee, in response to a call from the employer, places himself at the disposal of the employer. The expression "hours of work" is defined in Convention No. 46 entitled "Convention Limiting the Hours Of Work In Coal Mines (Revised), 1935" with reference to underground coalminers, as meaning "the period between the time when the worker enters the cage in order to descend and the time when he leaves the cage after re-ascending", and, in mines, where the access is by an adit, "the period between the time when the worker passes through the entrance of the adit and the time of his return to the surface." In Convention No. 57 entitled "Hours Of Work On Board Ship And Manning", the same expression is defined as meaning "time during which a member of the crew is required by the orders of a superior to do any work on account of the vessel or the owner or to be at the disposal of a superior outside the crew's quarters." In Convention No. 67 entitled "Hours Of Work In Road Transport." the same expression is defined as meaning "time during which the persons concerned are at the disposal of the employer or of any other persons entitled to claim their services and in the case of owners of vehicles and members of their families, the time during which they are engaged on their own account in work connected with a road transport vehicle, its passengers and its load." The definition further says that, even periods of mere attendance will be included in the term "hours of work". In Foot Note No. 1 on Pages 49-50 of the Second Report of the Inland Transport Committee, Seventh Session, Geneva, 1961, On General Conditions Of Work Of Railwaymen, the same expression has been defined as follows: "working hours are the time during which the persons employed are at the disposal of the employer; they do not include rest

periods . . . during which the persons employed are not at the disposal of the employer." This Note is based on the International Labour Code, 1951, Vol. I, page 195, Note 89. In my opinion, Indian labour legislation is also based upon the same notion. Almost All Indian Statutes on the subject of hours of work are based on the view that duty begins when a worker places himself at the disposal of his employer and ends when he ceases to be at such disposal. In the Motor Transport Workers Act, 1961, the expression "hours of work" has been defined as meaning "time during which a motor transport worker is at the disposal of the employer or any other person entitled to claim his services." In the Delhi Shops and Establishments Act, 1954, in section 2(14) the expression "hours of work" is defined as meaning "the time during which the person employed is at the disposal of the employer exclusive of interval allowed for rest and meals." Mr. Mahadevan has not been able to cite any legislation which takes or is based on a contrary view. In HER, 1931, the expression "hours of employment" was synonymous with hours of work in the above sense. In that document, the term "hours of employment" was defined as follows:

"This term refers to time during which an employee is at the disposal of the employer. It includes effective or continuous work and periods of inaction when the worker must be present on duty, although not exercising physical activity or sustained attention. It does not include 'intervals' when the employee is free to leave his place of work. Certain staff are given quarters near their place of work so that they can be 'on call' in case of necessity, but being 'on call' does not constitute 'employment' in this connection. Time taken in going between an employee's place of residence and his place of work (or the employee's headquarters from which he travels to his place of work) does not constitute hours of employment."

6.48. Mr. Mahadevan, however, relies very strongly upon the observations made at page 49 of the Report of the Inland Transport Committee, Seventh Session, 1961, On General Conditions Of Work Of Railwaymen under the caption "Methods of Calculating Hours of Work in the Railways." The Committee, after pointing out the variety, diversity and complexity in railway operations, says that all this is reflected in the variety and complexity of regulations governing hours of work and in particular the methods of calculating working hours. Then the Committee points out that the hours of work is a "composite" rather than a "simple" idea on railways. Then the Committee says that a certain number of countries, in drawing up regulations on the subject, have taken as a starting point the simple—or rather the simplest— notion that hours of work or duty comprise all the time during which an employee is at the disposal of the undertaking regardless of whether he is genuinely or productively occupied or momentarily idle for reasons beyond his control. After doing this, the Committee proceeds to make the following observations on which Mr. Mahadevan strongly relies :

"However, in most cases this simple notion has not been accepted, particularly with regard

to operating staff of the railways, with which we are particularly concerned here; hours of work are generally calculated in one (and in most cases more than one) of the following ways : (a) on the basis of its constituent elements; (b) as an average over periods of varying length; (c) as the equivalent of given distances travelled; or (d) according to the category of staff concerned”.

Mr. Mahadevan contends that the above observations throw overboard the contention of the Federation and show that the principle of hours of employment being equivalent to hours of work has not been accepted in the case of railways. According to Mr. Mahadevan, the above observations give a violent jolt to the principle for which the Federation contends. I do not agree. In my view, if the observations are carefully analysed, it will be found that they are made in the context of the calculation of hours of work and do not deal with the concept of hours of employment. The above observations, in my view, are not an authority for the proposition that an employee, though at the disposal of his employer, is still to be considered not at such disposal simply because the employer cannot engage him productively or fully. The four methods of calculation referred to in the observations are more useful for equalising the normal work involving full employment with inaction, complete or partial, so as to bring the latter at par with normal work. This method is useful when one has to deal with intermittent or intensive work, but, because such method is adopted, it cannot be concluded that, during the periods of inaction, complete or partial, the worker is not in the employment of the employer. That such is not the scope of the above observations is clear from the subsequent discussion in the Report relating to such topics as hours of work, definition of actual work, time spent on call at the place of work, time spent on call at home, waiting time, deadheading time, preparatory work, short breaks and interruptions of work, etc. Discussion on these various topics becomes necessary only for the purpose of calculating whether the whole or a part of the work should or should not be treated as equivalent to normal work of an employee and what credit is to be given to him for such work when calculating hours of work. From the conclusions mentioned in the Report of the Committee, it appears that either whole or partial credit is given for such work. This shows that the period during which an employee is at the disposal of his employer is the period of his employment and that credit is not given only for such period of work for which an employee is not at his employer's disposal.

6.49. For the above reasons, in my opinion, though periods of inaction, complete or partial, may justify a higher ceiling being fixed for hours of work for an employee, it cannot be stated that the employee is not in the employment of his employer when there are such periods of inaction in his employment. The very fact that the various International Conventions referred to above require that the regulations concerned in the case of intermittent work must also fix a ceiling of additional hours is itself an implied acceptance of the principle that an employee is in the employment of an employer when he is at his employer's disposal.

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6.50. Apart from above considerations, in my opinion, on general principle, the proposition that the duty of a worker begins when he places himself at the disposal of his employer at the latter's instance, is incontrovertible. In my opinion, if this view were not to be accepted, then, the object behind the fixation of daily and weekly ceiling of hours may come to be defeated and all the elements which determine the fixation of such ceiling may be thrown to the winds. If liberty were to be given to an employer to choose not to give any work after an employee has placed himself at his employer's disposal at the employer's instance, or if liberty were to be given to an employer to call the employee to the place of duty before any work can be offered to him and if such interregnum is not to be considered hours of duty or employment, it is obvious that the ceiling of daily or weekly hours may be extended to such a pitch that all domestic, social, humanitarian and health considerations, which prompt the public authority or the parties to fix the ceiling, can be rendered nugatory. In my opinion, in order that the ceiling may be effective, it is necessary that the call by an employer to his employee to render duty and the willingness of the employee to render such duty and making himself available for such duty should be regarded as the meeting point for the commencement of duty. From this principle, it follows that when an employer does not call an employee to duty but only asks him to be at his beck and call or not to leave the headquarters of employment without previous intimation to the employer or to keep the employer informed about the employee's whereabouts, the duty does not commence. All this is consistent with international thinking on the subject and the regulations prevailing on a number of foreign railways. This is so because, in all such cases, the employee is at liberty to go wherever he likes and is not glued down to his place of duty. However, as soon as the above point is crossed and the employee is called to the place of duty and, in response to the call of his employer the employee makes himself available to perform duty, duty commences even though, in a given case, the employer may not be in a position to avail himself, even for reasons beyond his control, of the service for which the employee has placed himself at his disposal.

6.51. For the above reasons, I have come to the conclusion that the contention of the Federation must be upheld that duty of an employee commences when he places himself at the disposal of his employer at the latter's instance and that such duty continues until he is fully at liberty to leave the place of duty.

6.52. Though I agree with the above proposition of the Federation that no distinction should be made between hours of employment and hours of work, I cannot agree with the further contention of Mr. Kulkarni that, therefore, the concepts of light work, effective work, periods of action, inaction and other similar factors should have no place in regulations relating to hours of employment. In my opinion, such concepts have a place specially when regulations justify the introduction of the concept of intermittent

work. Such concepts are as much justified as the concept of intensity of work which justifies the classification of Intensive workers.

Conclusions on fixation of hours of work

6.53. For the above reasons, I have come to the following conclusions :

- (1) that, ordinarily, for railway workers, the limits of hours of work should be fixed on the principle of 8 hours a day and 48 hours a week;
- (2) that they should be considered to be on duty when they are at the disposal of their employers, *i.e.* their hours of work should be deemed to commence from the time that they place themselves at the disposal of railway administrations in response to a call from them, and that their duty should be regarded as ending when they cease to be at such disposal;
- (3) that those categories of workers for whom preparatory and/or complementary work is necessary, additional hours should be fixed, the maximum of such hours also being fixed bearing in mind the principles governing the fixation of the ordinary ceilings themselves;
- (4) that the additional hours of work may also be fixed for persons employed in essentially intermittent work, the maximum of such additional hours also being fixed bearing in mind the same considerations; and
- (5) that lower ceilings should be fixed for intensive workers, also bearing in mind the same principles.

Preparatory and complementary work

6.54. That brings me to the question as to what is preparatory and complementary work. In my view, the expression ought not to be understood in a limited sense. The words used are of a general character and are intended to cover all cases where an employee is not in a position to begin work immediately on taking charge unless some preparatory work is done, and/or those cases where he is not in a position to leave his work unless some further work is done after his normal hours of duty. This concept is brought into prominence by stating that work must be of such a character that it must be carried on outside the limits laid down for the general working of the establishment. Therefore, in order that a work may be preparatory or complementary within the meaning of Washington Convention, it must be of such a character that it is necessary to be carried on outside normal hours of work. It may be urged that the exception does not apply where continuous processes are involved and employees work in shifts. If the language used in Article 6 is regarded as a guiding factor, then, perhaps there is some justification for the above view. However, some of the later Conventions have not restricted the scope of the exception in such a way. For example, in Article 3 of Convention No.

51 entitled "The Reduction of Hours of Work (Public Works)", it has been specifically stated that the exception applies not only to work carried on outside the limits laid down for the general working of the establishment, but, also outside the limits laid down for the general working of "branch thereof or of the shift." In Article 5 of Convention No. 61 entitled "The Reduction of Hours (Textiles)" the exception has been worded also in the same manner so as to include branches of an undertaking or shifts therein. In Article 3 of Convention No. 20, entitled "The Night Work (Bakeries)", the amplitude of the exception has been made still more clear by stating that work must be such as must be necessarily carried on "outside the normal hours of work." I have already stated that Article 6 of Washington Convention has a persuasive value and is not binding so far as India is concerned. Having regard to the provisions contained in all other Conventions and the spirit behind the provisions contained in Article 6 of Washington Convention, I propose to hold that the exception relating to preparatory and/or complementary work should be applied not only to work outside normal hours of work of the establishment as a whole but also to work in branches and in shifts on railways. Mr. Kulkarni contends that the exception must be confined only to the work done by a specified or particular class of workers and not to the whole body of workers in any industry. Mr. Kulkarni derives support from Note 206 on page 204 under Article 241 of the International Labour Code, 1951, Vol. I. That Note enumerates the classes of workers who were mentioned in Schedule B to the draft submitted to the Conference by the Organising Committee. I do not think that that Schedule is of any assistance in construing Article 6. That Schedule was not made a part of the Convention and was omitted from the Article. In my opinion, there is nothing in the *raison d'etre* of the Article which justifies limiting the scope of the exception to only certain classes of workers and not to all workers in regard to whom the condition of necessity for such preparatory or complementary work is satisfied. Mr. Kulkarni further contends that, in any case, the exception must be limited only to those workers who perform preparatory or complementary duties for other workers and not to those who have to perform such work in respect of their own duties. For the reasons already given, I am unable to accede to this argument also. I may mention that though originally Mr. Kulkarni's contention was that the processes of handing over and taking over of charge were not included in the above expression, he did not press the contention further at a later stage but restricted his contention in regard to certain types of work done by running staff. Now Mr. Kulkarni contends that all the duties which are performed by a driver or a guard outside the running hours cannot be regarded as preparatory or complementary work. The evidence discloses that, before a train departs, the driver has to perform, *inter alia*, various duties (1) at the shed, (2) from the shed to the platform of the departure station, (3) at the platform of the destination station, (4) from the latter platform to the shed, and (5) after arrival at the shed. The evidence also shows that a guard is also required to perform various types of duties before the train starts at the commencement of the

journey, and after the journey has ended. Mr. Kulkarni contends that a driver is required to check the engine at the shed to see that the booked defects in the engine have been repaired to ensure himself that the engine is in good fettle and roadworthy and that such work cannot be stated to be in the nature of taking over charge and that he books the defects in the engine in order to give notice to the authorities that such defects exist and require repairs. He submits that, similarly, all the duties performed by him at the above places are his normal duties and not preparatory or complementary. Similarly, in regard to a guard, Mr. Kulkarni contends that none of the preliminary or subsequent work that is required to be done by a guard can be considered preparatory or complementary. He says that such work is part of guard's work and is neither preparatory nor complementary. I am unable to agree with this distinction sought to be made by Mr. Kulkarni. It may be that all the work which a driver or a guard does before departure or after arrival of a train cannot be designated as taking over or handing over charge, but the expression "preparatory and complementary work" is wider than the expression "taking over and handing over charge." If the work is preliminary or complementary in the sense in which I have interpreted it, it must be regarded to be preparatory and complementary work and having regard to the purposes for which the aforesaid duties are being performed by a driver or a guard, I am unable to agree with Mr. Kulkarni's contention that the work is not preparatory and/or complementary. In this connection, I may mention that in clause (2) of Article 5 of Convention No. 67 concerning Regulation of Hours of Work in Road Transport, higher weekly limits of hours are prescribed *inter alia* for persons "who ordinarily do considerable amount of subsidiary work" and the expression "subsidiary work" as defined in clause (c) of Article 4 of the above Convention includes work which is comparable to the work done by running staff on railways which Mr. Kulkarni objects on the ground that it is not preparatory and/or complementary.

Essentially Intermittent Work

6.55. The next point for consideration is what is essentially intermittent work. I have already recorded my finding that additional hours can be fixed also in regard to essentially intermittent employment. As already stated, HER recognise such employment. I do not propose to consider the above question at this stage for the reason that that question can be conveniently considered when the demand of the Federation for the abolition of Essentially Intermittent class of workers is taken in hand. Therefore, for the present, I content myself by recording the finding that additional hours of work can be fixed also for railway workers employed in essentially intermittent work.

Ceiling of additional hours for Preparatory and Complementary work

6.56. The next question for consideration is, what ceiling of additional hours should be prescribed for the class of workers who have to do preparatory

and/or complementary work, or who are engaged in work which is essentially intermittent. It would be better if this subject is considered separately in regard to preparatory and complementary work on the one hand and intermittent work on the other. It is necessary to do this because, *ex hypothesi*, the additional hours required for preparatory and complementary work are required to be put in beyond the hours of work fixed on a consideration of the general factors which determine the daily and weekly limits of hours. On the other hand, if Essentially Intermittent class is to be retained, then, on the principle of equivalence, the above considerations will not apply inasmuch as the ceiling which will be fixed will be that which will bring the hours of work of intermittent class on a par with the hours of work fixed for non-intermittent class. However, in both cases, whilst fixing the additional number of hours, daily and/or weekly, the general elements which I have set out above in paragraphs 6.35 to 6.37 will be not only the governing but over-riding elements and, in any case, no ceiling can be fixed which will affect those elements. As already indicated, Article 6 of Washington Convention does not give any guidance on the subject inasmuch as it, *proprio vigore*, does not fix the maximum of additional hours. The Article leaves the matter in the hands of the competent authority. The Factories Act affords some guidance on this subject. Under clause (c) of sub-section (2) of section 64 of that Act, power has been given to the State Government to make rules providing for exemptions of adult workers engaged in intermittent work as defined therein from the provisions relating to weekly ceilings, weekly holidays, intervals of daily rest and spread-overs. However, that power is circumscribed by sub-section (4) of section 64 which says that, in making such rules, the Government shall not prescribe a limit exceeding 10 hours in any day and the spread-over inclusive of rest intervals exceeding 12 hours in any one day and that the total number of hours of overtime shall not exceed 50 in any one quarter. Sub-section (2) also empowers the State Government to impose such conditions as it may think necessary whilst providing for such exemptions. Therefore, under the Factories Act, the maximum of additional hours prescribed for intermittent work is 2 per day inclusive of overtime and that prescription is hedged in by certain conditions. According to the Report of the Committee of Experts on the Application of Conventions and Recommendations, 1967, page 246 paragraph 226, some information is available as to the number of additional hours which might be considered to be reasonable and, *inter alia*, the Report refers to the preparatory Report of 1919 for Washington Convention. According to the Report, the limits which were considered to be permissible at that time "amounted to a total of 60 hours a week in the case of permanent exceptions and 150 hours a year in the case of temporary exceptions or 100 hours a year for non-seasonal activities." When Convention No. 30 was adopted, the ceiling of 10 hours per day and 60 hours per week for intermittent workers and ceiling of 10 hours per day and 54 hours per week for preparatory and complementary work were also considered. According to the Report of the Committee of Experts on the Application of Conventions and Recommendations,

for preparatory and complementary work, the usual number of additional hours fixed by national law and practice are two a day and where weekly limits are set, they are usually similar, i.e. they do not allow more than 12 hours to be worked in any one week.

6.57. So far as preparatory and complementary work is concerned, the main test which may be applied should be how much time is necessary for doing such work. This should be the over-riding consideration. Therefore, the authority charged with the duty of fixing the maximum hours of work for preparatory and complementary work is required to take two steps in the matter. The first step is to determine how much time is necessary for performance of such work. The second step is to assure itself that the required time does not offend against the main elements which determine the fixation of hours of work. If the authority finds that the time necessary for both or any of the above purposes is within such limits, the maximum additional hours may be so fixed. However, if it finds that such time is beyond such limits, then, the authority will have to resort to one of two alternatives. The first alternative for it will be to eliminate the excess either wholly or partially and in case of partial elimination he may direct that the excess may be treated as overtime. In determining the latter question, the authority will have to guard that the prescribed weekly statutory limit is not crossed. If it so crosses, the excess time will have to be disallowed. In my opinion, there are no sufficient evidence and/or materials in the case to enable me to record a positive finding in regard to the additional hours of work which should be fixed for all kinds of preparatory and complementary work. Whatever evidence that is there is in regard to the subject of taking over and handing over of charge. I have indicated that this problem belongs to the field of preparatory and complementary work. Therefore, whilst I decide that, in determining the maximum hours for preparatory and complementary work, the railway administrations must bear in mind the principles indicated hereinbefore, I propose to say something more in the light of the evidence adduced in the case as regards additional hours in regard to taking over and handing over charge. There is reasonable ground for belief that, in regard to a significant number of workers, the process of handing over and/or taking over is not involved and that, even where it is so, in a majority of such cases, the time consumed is less than 15 minutes. At present, such time is not mentioned in the rosters and, under HER, such period is not taken into account for considering either the daily or the weekly limits of work except in regard to running staff. Ultimately, Mr. Kulkarni concedes that the above provision can be justified on practical grounds and that, if any change is made therein compelling the administrations to reflect such additional time either in rosters or to consider it as period of duty, a number of administrative difficulties and problems may arise. Therefore, I decide that no change requires to be made in regard to the present practice of ignoring the time consumed for taking over or handing over for less than 15 minutes as period of duty. On the same ground, I also decide that in other cases of preparatory and complementary work, the same rule should be fol-

lowed and that workers who are at present required to come for preparatory and complementary work earlier by less than 15 minutes or to depart later by less than 15 minutes should continue to do so. However, neither HER nor evidence makes it clear as to what should be done when the time required both for preparatory and complementary work at the commencement of duty and at the end thereof is less than 15 minutes individually but aggregates to 15 minutes or more collectively. I have come to the conclusion that, in such a case, both the periods should be added up and if the collective period aggregates to 15 minutes or more the same should be considered as additional period of work and should be specifically mentioned in rosters. If the time consumed for any of the purposes is 15 minutes but less than 45, then, that period is counted at present and, having regard to my above decision, if such time is collectively so both for preliminary and complementary duties, it will be counted as period of duty to the extent of 30 minutes per day, and if such time is 45 minutes or more, one full hour is or will be counted as period of duty. Although according to this arrangement some workers have the benefit of 15 minutes or less and some others suffer a disadvantage of the same period, Mr. Kulkarni concedes that the arrangement is administratively convenient and has the merit of eliminating a substantial amount of detailed calculations. However, this arrangement, if permitted to continue as it exists today, is likely to offend statutory provisions and, therefore, I propose to consider the matter individually in regard to each class of workers. In doing so, the principle to be borne in mind is that, whilst notional period of work may be allowed its play when considering administrative matters, it cannot be allowed any such play, if the notional period offends any statutory provision. When testing any provision on the subject with reference to a Statute, the actual period of work will be the determining factor and not any notional period. Now, as regards Continuous workers, the above additional hours will be within statutory limits only if they are required to work actually for one more hour per day. If work is exacted from them for more than one actual hour per day, then, the statutory weekly limit of 54 hours on an average in a month is likely to be crossed in their case. For the above reasons this cannot be permitted. Under the circumstances, in my opinion, as regards Continuous workers, the existing rule that additional work between 15 and less than 45 minutes per day should be taken as half an hour's work per day may be retained, but, the rule which says that work between 45 minutes and over per day shall be treated as one hour's work per day will have to be modified in such a way that it is made clear that the work between 45 minutes and one hour shall be regarded as one hour's work per day but that no work can be taken from such a worker over one hour per day. This is so because in the case of Continuous workers, additional actual work of more than one hour per day will contravene statutory provision on the subject. Now, as regards Intensive workers, it is quite clear that they will be crossing their statutory limit if they are called upon to work for more than 3 hours a week. Therefore, in their case also, the above artificial rule cannot be allowed to prevail. In their case, the rule which treats

the period between 15 minutes and less than 45 as half an hour will have to be modified by curtailing the upper limit to 30 minutes. Intensive workers cannot be allowed to work for more than an actual additional period of 30 minutes per day. Therefore, in the case of Intensive workers, they can be made to work for preparatory and/or complementary work only for an actual period of 30 minutes and not an artificial period as calculated in the case of Continuous workers. In the circumstances, in the case of Intensive workers, the existing rule will have to be modified that, in their case, the additional work for a period between 15 and 30 minutes per day should be treated as work for half an hour per day and it will be provided that work for any further period on any day cannot be taken from them. For the same reasons, as regards Intermittent workers, if the existing ceiling of 12 hours per day is to be maintained, they cannot be called to work actually for more than 30 minutes a day and the rule will have to be modified in their case in the same manner as in the case of Intensive workers. Therefore, I decide accordingly. The decision may be recorded in the following propositions :

- (1) for all classes of workers, Continuous, Intensive and Essentially Intermittent, preparatory and complementary work of less than 15 minutes per day will be ignored, will not be mentioned in rosters and will not be counted as period of duty;
- (2) for Continuous workers, preparatory and complementary work between 15 and 45 minutes per day will be treated as half an hour's work, will be reflected in rosters and will be considered as period of duty ;
- (3) Continuous workers who are required to do preparatory and/or complementary work for a period between 45 minutes and one hour per day will be considered to have rendered duty for one hour. The same will be reflected in rosters and will be considered to be duty. However, Continuous workers cannot be required to do preparatory and/or complementary work so as to violate the statutory limits ;
- (4) as regards Intensive and Essentially Intermittent workers, preparatory and complementary work for a period between 15 and 30 minutes will be considered to be duty for 30 minutes and rosters will be prepared accordingly. However, no Intensive worker shall be required do such work as to violate the statutory limits ;
- (5) if the additional number of hours for Essentially Intermittent workers happens to be reduced, then, in their case, the above propositions will be suitably modified; and

- (6) the existing practice in regard to running staff of treating the whole period from signing-on to signing-off as period of duty will continue.

6.58. One of the grievances of the Federation is that, in case of some workers, though the time for taking over and handing over is 15 minutes or more, the same is neither reflected in their rosters nor counted as period of duty. I propose to discuss later this question in relation to those workers for whom evidence has been led on the subject, but at this stage, I propose to make only a few general observations. In my opinion, normally, a worker is not bound to come on duty earlier than his rostered time and to remain on duty later than such time. If the employer requires him to do so on the ground that the worker is required to do preparatory and/or complementary work, it is for the employer to indicate that the worker should so come for that purpose. In view of my conclusions that no specific orders need be given to workers required to come earlier by less than 15 minutes or to depart later by the same period and that such period need not be mentioned in rosters, the workers who are at present required to come accordingly will have to continue to do so without any specific orders from the administration. However, if the administration requires that any worker should either come before and/or stay after his rostered hours by a period of 15 minutes or more, it is the responsibility of the administration to issue specific orders on the subject, specifying the workers who are required to do preparatory and/or complementary work, the period for which it is necessary for them to come earlier or stay later and to incorporate such time in rosters prepared for such workers. In my opinion, unless all these matters are incorporated in rosters, the concerned workers are not bound to attend for duty earlier and/or to stay longer than their rostered hours. Therefore, I decide that, in all such cases where administration requires any worker for either preparatory or complementary work or for both and where the time necessary for such purpose or purposes is 15 minutes or more, then, the same should be incorporated in rosters and the period for which the concerned workers are required to come earlier and/or to stay longer for work should be also incorporated therein. All such decisions should be taken, bearing in mind the principles which I have enunciated above, compliance with which alone can justify a demand from the workers of preparatory and complementary work.

Is preparatory and/or complementary work overtime

6.59. The next question for decision is whether the additional hours required for preparatory and complementary work should be regarded as overtime or normal hours of duty. I have already recorded the finding that Article 6 of Washington Convention does not command that such additional hours should be considered overtime. The problem as to whether they should be so considered or not on merits may now be discussed. There are two schools of thought on the subject and provisions in different countries

vary in accordance with their views on the matter. In a number of countries, the additional period is treated as overtime but in some countries it is not so reckoned, and additional work is reflected in a higher scale of pay for such workers. I am in favour of the latter view. In my view, it is not correct to say that such type of work is overtime. *Ex hypothesi*, the worker is required to do such work because it is necessary for him to do it in order that he himself may perform his duties satisfactorily or that some of his co-workers may do so. Therefore, in my opinion, preparatory and complementary work must be regarded as normal work which has to be performed by a worker in the normal discharge of his duties. Therefore, the work being normal in nature and required to be performed every day, the additional hours of work must be counted to be normal hours of work during which the worker is required to work and if any higher remuneration is required to be paid to him on that account, it should be reflected in his scale of pay and not by way of overtime. Overtime is that which a worker does beyond his normal hours of duty and though the work which he performs during overtime is of the same kind as ordinary work, it is work which he performs outside the normal hours beyond his daily or weekly quota of work but which is rendered necessary on account of the presence of extraordinary factors or which the employer exacts for producing more. The rate for overtime is higher than the ordinary rate and, in my opinion, if *ex hypothesi*, preparatory and complementary work is normal work and is not exacted for any profit motive, it is not correct to pay the worker at a higher rate for such work which is his normal work. Moreover, though the principle is not absolute or decisive, regulations must be so framed as to avoid exaction of overtime. If preparatory and complementary work is to be regarded as overtime, this principle is also likely to be affected. Under the circumstances, as already stated, I prefer the view that preparatory and complementary work should not be reckoned as overtime. I have no details on record to show whether in cases of those workers who are called upon to do preparatory and complementary work, their pay does or does not reflect this type of work. If it is the case of any class of workers that this is not so, it is for them to take such measures as they may desire to get them so reflected in their scales of pay or, still better, for the concerned administrations to take up such cases and to set the matter right if such work is not so reflected.

Principle of averaging

6.60. That brings me to the question of averaging. The points raised by Mr. Kulkarni in regard to this question are (1) categories of railway workers to whom it should be applied; (2) the averaging period, and (3) the impact of averaging on overtime. In order to resolve the disputes arising on these subjects, it will be useful to bear in mind the reasons which justify the introduction of averaging system. When normal hours of work have to be fixed for workers, necessarily, they have to be calculated over a given period and, for sociological, physiological or practical reasons, the reference periods all over the world are the day or the week or both. It is for this purpose

that international practice always has been to prescribe normal hours of work in terms of a day or a week, or both. However, at the same time, international practice also recognises that, if the reference periods are rigidly adhered to, difficulties are experienced which require to be surmounted. Therefore, both national laws and international thinking permit adjustments in the time-table and in the number of hours normally worked in a country or in an industry. According to the Report of the Committee of Experts on Application of Conventions and Recommendations, 1967, page 220, paragraph 118, such adjustments are necessary "in order to take account of variations mainly of a technical and economic nature." According to the same report, these adjustments can be effected by exceeding normal working hours where this is permitted under exceptions, or by distributing normal working hours according to variations in the activities of the undertaking. Such changes are made within the prescribed daily and weekly limits or by averaging of hours of work over periods of more than a week, or by making up of hours of work which have been lost. Therefore, it is not disputed by Mr. Kulkarni that the system of averaging is a recognised system. The question which has been raised on behalf of the Federation is as to which particular system or parts thereof can justly and properly be applied to railway workers. It appears from the Report of the Inland Transport Committee, 1961, Seventh Session, that systems of averaging are in wide-spread use on railways "particularly for railway operating staff." Further-on, the Report says that the system applies also to other categories of employees "such as non-travelling station staff, persons who work on rosters or on two-or-three shifts systems." The reasons for the introduction of such systems are given in that Report as having "the advantage of enabling the administration to distribute the number of hours during which the regulations authorise them to keep their employees on duty unequally according to the requirement of the service." (*Vide* pages 55-56 of the Report). The Adjudicator has enumerated four grounds in justification of the system of averaging. They are : averaging (1) is inevitable on railways, (2) is necessary to prevent statutory limits being exceeded because of fluctuations in traffic, (3) is necessary to provide a measure of elasticity in railway working, and (4) facilitates timely furnishing of monthly returns and bills of overtime payment. Mr. Kulkarni subjects each of the above grounds to a severe scrutiny and contends that, even if there is any validity in any of them, it does not justify the introduction of the system of averaging in regard to non-running staff. Though, in my opinion, the fourth ground may not be so valid as the other three and that that ground may now have lost cogency in recent times, there is no doubt whatsoever that the other three grounds mentioned by the Adjudicator have a cogency of their own. There is evidence to show that forms of returns have been mechanised, that the work in regard to returns of such matters as goods and coaching traffic has been centralised and that the period for preparing traffic returns has been reduced from a month to ten days. There is also ground for belief that the work of preparing periodical returns may be distributed amongst different staff; as for example, a supervisory

SM can delegate that part of his duty to his ASMs. There is some justification for the criticism that hours of work of workers should be allowed to be adjusted on the fourth ground mentioned above but, even recognising the cogency of this criticism, in my opinion, one cannot escape the fact that railway working is of such a kind that adjustments in working hours have constantly to be made. Railway work is not static. The commencement and termination of work of certain categories of railway workers, specially those engaged in transportation work, fluctuate under a number of circumstances over which such categories have no control, and they are dependent upon the working of certain other categories of workers. Railways are a continuous industry and must work round the clock. Therefore, it is necessary that, at least so far as the operating staff is concerned, there must be at least one man available to man a job round the clock. The patterns of train operations are never consistent, specially in regard to goods trains. The commencement and termination of journeys of such trains are dependent upon so many factors that it is extremely difficult to run goods trains according to schedules. This is so even in regard to express and mail trains, though to a lesser extent. Moreover, traffic fluctuates on railways for various reasons. Traffic requirements may differ according as it is day or night, peak periods or otherwise and seasons. There may be rush periods such as periods when there are fairs, holidays, periods for performing pilgrimages, etc. The Act has recognised this peculiarity of railway work by fixing statutory limits on the higher side. Not only this, but, unlike other industries, the Act has not fixed any ceiling in regard to daily hours of work. Probably, the same compulsion has dictated the provision in section 71-F that no railway worker, where reliever is provided, shall leave his place of duty unless he is properly relieved. Mr. Kulkarni admits that, for the above reasons, the system of averaging is necessary, but, his main contention is that the above reasons can only justify introduction of such a system in regard to running staff and not other staff on railways. Mr. Kulkarni also admits that the working of railways is of such a nature that a ceiling of overtime daily hours cannot be permitted to be fixed, and he submits that no claim for fixation of such a ceiling has been made in recognition of this fact. But, contends Mr. Kulkarni, that, for securing this object, the introduction of the system of averaging in regard to all staff is not necessary. He contends that, all that can be demanded on the above grounds from railway workers is that there must be a railway worker to man a job, but, he says that there is no necessity for making adjustments of hours of work in regard to all the rest of the staff by introducing the system of averaging. He says that, if this is done, then, it will be at the cost of overtime earning which the staff is entitled to. He says that if any of the above matters are to be provided for, then, inasmuch as there is no overtime daily ceiling to be fixed for a railway worker, he can be called upon to work for a greater number of hours on any day than he is required for the purpose of carrying on railway work, but railways must pay overtime to workers in that contingency. He says that, therefore, the system of averaging over a week or a number of weeks is not at all necessary except in the case of running staff. I have given

my anxious consideration to all that Mr. Kulkarni says on this aspect of the matter. I have no doubt whatsoever that his contention is not valid in regard to all railway staff. My reasons for this conclusion are as follows : In my opinion, the three main grounds given by the Adjudicator justify the introduction of the system of averaging not only in regard to running staff but also in regard to operating staff as a whole. The fluctuations in traffic and other peculiar features of railway working affect the services not only of running staff, but, of operating staff as a whole. If a goods train cannot be run according to schedule, then, not only the railway crew operating the train are required to work that train, but, the whole gamut of non-running staff connected with the operation of the train from the beginning of the journey to its end must necessarily also be detained in order that railway work may be synchronised. That such is the case in a large majority of countries is clear from the information collected in the Report of the Inland Transport Committee, 1961, in Table VII at pages 36 to 38. From the information given in the Remarks Column of that Table, it appears that, in quite a significant number of countries, the system of averaging is applied to operating staff on railways. This is also pointed out in the Report in the passage already quoted from page 55. This practice is in accordance with the principle enunciated in Article 5 of Washington Convention. As already stated, it is conceded by Mr. Kulkarni that this Article applies to running staff. I have already rejected his contention that that Article is limited only to running staff. For the reasons already given, it can be stated with confidence that, in the case of operating staff too, the provisions of Article 2 cannot be applied. Therefore, in my opinion, there is high authority for applying the system of averaging to both running and operating staffs on railways. As regards the rest of the staff, in my opinion, the principle enunciated by clause (c) of Article 2 applies to those workers who are engaged in shifts, whether two or more. The reasons which I have given for the application of the system of averaging to operating staff as a whole apply to this class of workers as well. This conclusion accords with the practice which is prevailing on certain foreign railways as pointed out in the Report of the Inland Transport Committee, 1961, at pages 55-56, already reproduced. Therefore, the problem which requires to be attended to in regard to the first question as to which class of workers, the system of averaging should be applied to, concerns those railway workers who do not come within the purview of running and operating staffs and those engaged in shifts. The justification for the inclusion of the balance of the staff in the above system can be found only if they, in their turn, come within the purview of Article 5 of Washington Convention. Parliament has proceeded on the basis that some such principle applies to all such classes of staff also. I have already mentioned that one of the principles which should be borne in mind by an adjudicator relating to railway disputes is that, in order to achieve efficient results, railway operations must synchronise with one another. In my opinion, in so far as that staff on railways is concerned whose work is bound up with running and operating staffs and shift-workers, the principles underlying Article 5

must be applied too, otherwise, railway work may go topsyturvy. I have no materials on record to undertake this task of disentangling staff which belongs to the class whose work is bound up with the work of running and operating staffs and/or shift workers from those whose work is not so bound. In the absence of any such material, in my opinion, it will be taking a leap in the dark if any decision were to be reached and the existing practice on the subject disturbed. Mr. Kulkarni makes a very strong plea, at least in regard to those who are borne on non-cyclic or fixed rosters. He says that, *ex hypothesi*, the hours of work of such persons being limited to only one shift, it must be presumed that their presence outside fixed rostered hours is not necessary. I am unable to accept this contention in this bald form. In my opinion, the reasons for the application of the averaging system may also apply, and certainly do apply at least in some cases, to those borne on non-cyclic rosters too. For example, hours of work of train examining staff and ticket collectors may be bound up with the work of station staff and the presence of both the categories may be necessary at one and the same time for synchronising the work. This conclusion is in accordance with the practice prevailing on some railway systems in the world, as pointed out in the Report of the Inland Transport Committee, 1961, at page 56 already reproduced. The facts that, on railways, no overtime daily ceiling is applied and section 71-F of the Act is enacted are legislative recognition of the proposition that hours of work of even those borne on non-cyclic rosters may require to be adjusted. Under the circumstances, all that I can decide on this part of the dispute is that the concerned administrations will examine the cases of those who do not belong to running or operating staffs or who are not shift workers, in the light of the principle enunciated in Article 5 and, if a decision is not arrived at within two years from the date of this Report on the basis of that principle for including such staff in the averaging system, the concerned staff will be excluded from the operation of the averaging system. It follows that, in the case of such staff, if any work is taken beyond the rostered hours on any day, overtime will be calculated and paid on a daily basis.

6.61. As regards the averaging period, it will be noticed that the system of averaging, except in one rare class of cases, is always a system of adjustment of working hours. Now, averaging may be in regard to daily hours or weekly hours of work. I am not concerned with the former topic. As already stated, the Federation does not make any claim in regard to that subject. In determining the averaging period, one important point is to be borne in mind, and that is, that the averaging system does not justify addition to weekly hours of work. The aim of the introduction of such a system is to permit the employer to adjust weekly hours in such a way that he may have sufficient elbow-room to distribute the weekly hours of work to suit his needs. Therefore, the averaging system, whilst permitting him to make such adjustments within a certain number of weeks, enjoins the employer that within such extended period, the number of weekly hours shall not be exceeded. Now, the main feature of HER is that the number

of hours during an averaging period are always more than the number of rostered hours during the same period. A worker earns overtime not when he is required to put in more than rostered hours during the averaging period, but, he earns overtime only after he works overtime beyonds statutory hours. In my opinion, such a practice cannot be justified. Now, as regards the averaging period, there is considerable diversity of practice on railway systems of the world. The period ranges from two weeks to a year. Under HER, the averaging period is a month for Continuous and Intensive workers and a week for Essentially Intermittent and, as already stated, the averaging period has been reduced by agreement to two weeks in the case of Continuous and Intensive workers. Now, in this connection, the scheme embodied in Washington Convention makes a distinction between shift workers on the one hand and workers governed by Article 5 on the other. In the former case, the permissible averaging limit has been prescribed to be three weeks and no more. In the latter case, no such ceiling has been fixed but the matter is left to be determined by agreement between the parties. But, the important point to be noticed in both the classes of cases is that, once an averaging period has been fixed, then, exaction of work for more than 48 hours per week on an average during the averaging period is prohibited. Therefore, whereas the ceiling in the case of shift workers cannot be more than three weeks, in the case of other classes of workers, it may be more. As already stated by me, in fixing the averaging period, the same important principles have to be borne in mind which regulate the fixation of the daily and the weekly hours of work, those important considerations being, *inter alia*, social, domestic and civic obligations and health and efficiency of workers. There is no evidence on record to show that any of these important considerations will be negated if the existing practice in regard to the averaging period is maintained. On the contrary, the provisions appear to be more liberal and more in favour of the workers if they are compared with the provisions contained in Washington Convention and the practice prevailing on some foreign railway systems. Therefore, I decide that, in the case of Continuous and Intensive workers, the averaging period should be two weeks and, in the case of Essentially Intermittent workers, it should be a week.

6.62. Whilst discussing the second facet of the averaging problem, I have already referred to an important difference between HER and provisions of Washington Convention, that difference being that, whereas overtime is earned under HER only if the worker puts, during the averaging period, more hours of work than statutory limits, under the provisions of Washington Convention, he will be doing so the moment he puts in more hours of work than average weekly hours. I have already stated that, on general principle, the provision contained in HER is not justified. In my opinion, in this regard, statutory limits have no relevance. Those limits are and have to be fixed in order that more elbow-room may be given to railway employer who has to operate in a constant state of uncertainty.

But that is no justification for reckoning the extended hours as normal hours of work. Mr. Mahadevan contends that if work outside rostered hours but within statutory limits is considered overtime, then, overtime will be a constant and regular feature on railways. It is true that, as far as possible, working hours should be so regulated that overtime is avoided, but, this principle cannot be made a fetish of, nor can it be allowed to over-ride the main concept of overtime. If overtime becomes a constant feature, it is the duty of the employer to take other legitimate measures to avoid overtime and if, for some valid reasons, this cannot be done, in my opinion, the mere fact that overtime will be a constant feature should not be regarded as a deterrent. Overtime, by all standards, is that which a worker is called upon to work beyond his normal daily and/or weekly hours. If averaging is permitted, then, overtime will be that work which a worker is called upon to perform beyond the average number of hours over averaging period. In that view of the matter, where averaging is allowed, a railway worker earns overtime the moment he puts in, during the averaging period, hours of work which are in excess of those permitted during the same period. Therefore, I have come to the conclusion that, in the case of Continuous and Intensive workers, they will earn overtime if they put in more than 96 and 84 hours respectively in two weeks plus, in those cases where they are required to do preparatory and complementary work, the additional number of hours which they are required to work on that account during that period, and, in the case of Essentially Intermittent workers, they will earn overtime if they are required to put in more hours in a week than those determined for them hereafter plus, in the case of those EI workers who are required to do preparatory and complementary work, sufficient number of additional hours during the averaging period which they may be required to work on the above account.

6.63. As already stated, though by agreement the averaging period has been reduced in the case of Continuous and Intensive Workers to two weeks, their daily rate of overtime is calculated on the basis of the total number of hours arrived at on the footing of a monthly average. In my opinion, having regard to the agreement and now having regard to my above decision, this practice is not and will not be justified. Therefore, I decide that the daily rate of overtime should be calculated on the basis of the total number of rostered hours during the averaging period determined for the concerned class of employees.

Rate of overtime payment

6.64. In my opinion, it will be convenient to discuss the question of rate of overtime at this juncture, as some of the factors which apply to the subject of averaging have also a bearing on the subject. The scheme of overtime in HER is as follows : a railway worker does not earn overtime until he puts in more than the average number of hours in the averaging period applicable to him, under the Act or, in the case of Continuous and Intensive workers, under the agreement already referred to, as the case

may be. As a result of this provision, as a general rule, a railway worker earns overtime only if his hours of work during the averaging period go beyond statutory and contractual limits. Moreover, administrations are precluded from taking work beyond statutory limits except in the circumstances mentioned in section 71-C. Therefore, for practical purposes, under HER, overtime is that work which a railway worker performs beyond contractual or statutory limits, in the latter case, under an order of temporary exemption made by a competent authority under section 71-C of the Act. The Act itself does not prescribe a definite rate for overtime. It only prescribes the minimum rate for the same and that minimum rate is $1\frac{1}{2}$ times the ordinary rate of pay. This minimum rate has been prescribed as the prescriptive rate under other provisions of HER. Therefore, at present, a railway worker is paid at the rate of $1\frac{1}{2}$ times his ordinary rate of pay for overtime. The demand of the Federation is that overtime should be paid at double the ordinary rate. In support of this contention, Mr. Kulkarni relies upon (1) parallel Indian legislation on the subject, (2) stringent circumstances in which a railway worker is called upon to work overtime, and (3) allegation that overtime arises more out of avoidable circumstances and that such circumstances pertain to reasons of economy and not exigency. On the other hand, Mr. Mahadevan contends that there are important differences between the circumstances in which overtime is taken in other industries and on railways and that, if the rate is increased, abuses are likely to creep in which it may be difficult for railway authorities to control. Mr. Mahadevan denies that overtime is the result of avoidable circumstances, and also relies upon the rates prevailing on foreign railways. Now, it is a fact that, in almost all Indian parallel legislation, the rate of overtime is a uniform rate, twice the ordinary rate of pay without any differentials on the basis of the conditions or circumstances in which overtime is exacted, such as day or night, holidays, Sundays or the number of overtime hours. On Indian Railways also, no differential is paid on any such account. However, the information collected in the Report of the Inland Transport Committee, 1961, pages 46 to 48, shows that the rate is uniform in some countries and that, in some others, it varies according to the range of overtime hours, whether overtime is worked at night, on Saturdays, Sundays or holidays. Table IX on page 47 thereof shows that in Italy, Switzerland and UK, the increase in pay for overtime is 25 per cent, in China (Taiwan) 50 per cent and in some other countries; progressive differentials are applied according to the number of hours of overtime. In Belgium, it is 25 per cent for the first hour and 50 per cent for every hour after the first. In France, it is 25 per cent for the first four hours and 50 per cent for all additional hours. In Australia and New Zealand, it is 50 per cent for the first four hours of overtime and 100 per cent for all additional hours. Washington Convention prescribes a minimum rate of $1\frac{1}{2}$ times the ordinary rate in the case of workers who are called upon to do preparatory, complementary or essentially intermittent work. Now, there is some justification for the submission that overtime work comes to be rendered on railways in circumstances which may

cause greater hardship to a railway worker than to a worker employed in other industries. HER do not prescribe any ceiling for daily or weekly overtime or any daily rest either during ordinary work or overtime. The hardship is specially more in the case of running staff. Such staff may be called upon to work overtime at a stretch after having rendered duty for 12 or 14 hours and, sometimes, after remaining away from home for several days. All railway workers may be called upon to work overtime at night, after having worked during the day and *vice versa*. Except, perhaps, the underground miner, no other worker is required to work under such conditions of hardship. However, it will not be proper to over-emphasize the above conditions. As already stated, under the present HER as a general rule, overtime can be taken only in circumstances mentioned in section 71-C and that too after an order of temporary exemption has been made by a competent authority. Now, all the circumstances which have been mentioned in that section, except in the case of pressure of work, are circumstances which are of such vital and national importance that, if railway workers were not called upon to work overtime to meet those contingencies, national interests will suffer. A railway servant has a special responsibility in such cases which he has consciously undertaken by entering railway service. It is true that the additional burden arising out of such circumstances should not be thrown on the labour alone but, at the same time, it is also not proper that the whole of this burden should be thrown upon the railway administration as a whole. In my opinion, the burden arising out of the circumstances mentioned in section 71-C should be shared and adjusted in a proper manner between both the employer and the employee. In apportioning the burden, it may be borne in mind that administrations cannot, even by exercising reasonable foresight, envisage the workload which the worker may be called upon to carry as and when circumstances mentioned in section 71-C arise. The administrations have no control in the matter and the workload cannot be reasonably anticipated. At the same time, it is the duty of administrations to make all adequate provisions so that, as far as possible, the above contingencies may not be an additional burden on the labour, specially if they have knowledge of such additional burden gathered from past experience. In this connection, it is important to notice that Article 3 of Washington Convention permits additional hours of work to meet all the aforesaid contingencies except in the case of pressure of work and does not either make any provision for payment of overtime or prescribe the minimum rate of overtime as it does in the case of overtime worked by those who have to do preparatory and complementary and essentially intermittent work. That Article and Article 7(3) of Convention No. 30 and Paragraph 17 of Recommendation No. 116 do not set any limit to overtime work in such conditions. Article 7(4) of Convention No. 30, whilst prescribing the minimum of $1\frac{1}{2}$ times the regular rate for overtime in certain cases, specifically excludes any such prescription for such cases as are mentioned in section 71-C of the Act, except the case of pressure of work. Having regard to my conclusion that overtime is

that which is worked beyond rostered hours, the scope for exemption of such work will be within statutory limits and the period of overtime during such limits will be still further curtailed if the worker has to perform preliminary and complementary work by the number of additional hours which such workers may be called upon to work for such purposes. Therefore, though HER do not specifically prescribe any limit for overtime, virtually a ceiling of either six or less hours of work per week comes to be prescribed and whatever further overtime is required will be principally for the purposes mentioned in section 71-C of the Act. In my opinion, the scheme which will emerge as a result of my decisions will, on the whole, be such that, if overtime is required to be worked to meet the contingencies mentioned in section 71-C, the difference between the rostered and the statutory limits should suffice in the case of a majority of workers and only those workers whose preparatory or complementary work exhausts the statutory limits will be required to work overtime beyond such limits for the contingencies mentioned in section 71-C of the Act. Under the circumstances, in my opinion, if different rates are prescribed for overtime worked between the termination of rostered hours and statutory limits and for overtime worked beyond statutory limits, they will meet the ends of justice. Incidentally, such a scheme will compel the authorities to exercise due care and caution in requiring railway workers to put in additional hours of work for preparatory and complementary work, for, under the scheme, the higher rate for overtime will arise for the latter class of workers earlier than the other workers and there can be no question of discrimination in view of the fact that occasion for working overtime arises in the case of preparatory and complementary workers after they have worked more number of hours than other workers. It is true, as Mr. Mahadevan says and as held by me when discussing the question of averaging, that the hours of work on railways for peculiar reasons are uncertain and cannot always be adhered to. But, in my opinion, such contingency is amply provided for by the introduction of the system of averaging and by prescribing statutory limits. There is precedent for prescribing different rates not only in international practice, already referred to, but also in one of the national laws—The Motor Transport Workers Act, 1961—which deals with a comparable industry. Section 26 of that Act prescribes double the ordinary rate for overtime work in the case referred to in the first proviso to section 13 of that Act, but does not prescribe any such rate and leaves it to the rule-making authority to do so in the case of overtime rendered in the circumstances mentioned in the second proviso to section 13. The circumstances mentioned in the latter proviso are “breakdown, dislocation of a motor transport service or interruption of traffic or act of God.” My attention has been drawn to Bihar Rules on the subject where the rate prescribed for overtime arising under the circumstances mentioned in the second proviso aforesaid is $1\frac{1}{2}$ times the ordinary rate. There is one more reason which, in my opinion, justifies such two different rates. The Federation contends that the incidence of overtime is greater than justified, *inter alia*, also for reasons such as (1) short-fall

in-cadres, (2) failure to fill up vacancies in time, and (3) inadequacy of leave reserves. Mr. Mahadevan strongly opposes this proposition and contends that not only the above reasons are not valid, but that they do not fall within the purview of the present Reference. I agree that none of the above matters directly falls within the purview of this Reference, but, in my opinion, in so far as the Federation contends that the incidence of overtime is greater than justified because of the above reasons, the matter does come within its purview, specially when considering the question of the rate of overtime. In my opinion, there are enough materials in the case to record a finding on the subject. Several high-powered Committees have dealt with the above matters from different points of view and almost all of them have warned that the incidence of overtime in some measure can be attributed to the existence of the above causes. There is reason to believe that, in spite of the above warnings and recommendations of those bodies, there is not much improvement in the situation. Before the Report of the Kunzru Committee, a ban was imposed on recruitment for certain reasons. The Kunzru Committee in paragraph 62 of its Report, Vol. I, and paragraph 90 of its Report Vol. II, highlights shortages existing in operational categories of railway staff. Because of this Report, the ban on recruitment was removed in or about 1963. However, the ban was re-imposed in 1967. Wanchoo Committee, in paragraphs 224-247 of its Report, Vol. I, reiterates the above position and further, in paragraph 248 expresses the view that overtime work was partially due to shortage of sanctioned staff. The evidence discloses that the Railway Board, to assuage the grievance on the ground of inadequacy of leave reserves, prescribed certain minima and maxima of leave reserves. The figures collected by Wanchoo Committee on the subject of leave reserves show that, on railways, such as Western and Northern Railways, even the minima are not adhered to in regard to such important categories as cabinmen, levermen and pointsmen (*vide* paragraph 257 of its Report, Vol. I). Wanchoo Committee expresses a definite view that overtime working was partially due to inadequacy of leave reserves (*vide* para 252 *ibid*). I am not in agreement with Mr. Mahadevan's contention that inadequacy of leave reserves has nothing to do with the incidence of overtime and that such inadequacy may, at the most, lead to non-enjoyment of leave on the part of the staff only and that it cannot have any impact on overtime. Dutta, the Railway Board's witness, had reluctantly to admit that the provision of leave reserves and rest-givers was made to avoid overtime and that inadequacy thereof may result in overtime. Gurlal Singh mentions the various elements which go to determine the strength of leave reserves. The Adjudicator also indicates the factors which should determine the percentage of leave reserves. I have no doubt whatsoever that, if the percentages of leave reserves arrived at on the basis of such elements are not adequately maintained, then, the result will be that railway servants will be required to work overtime. In my view, railway administrations, though justified to demand overtime for purposes mentioned in section 71-C or for reasons inherent in railway working, are not justified to call upon railway workers to work overtime if the same is required to be done

for inadequacy of leave reserves, non-filling up of vacancies and short-fall in cadres. In such cases, overtime arises because of or is wholly or partially attributable to extraneous reasons, specially reasons of economy inspired by profit motive. In my opinion, in order that such causes may be controlled, if not altogether eliminated, it is necessary that a different rate for overtime should be prescribed after due provision has been made for exaction of overtime for legitimate purposes. In my opinion, overtime within the statutory limits makes ample provision for the same. It is probably because of this that the Act treats all work exacted under temporary exemption orders as overtime and directs that a minimum overtime rate should be paid. Therefore, having regard to the scheme decided upon by me, if any overtime is required to be worked beyond statutory limits, a higher rate is warranted. Mr. Mahadevan relies upon the reasons given by the Adjudicator for rejecting a similar demand of the Federation. The Adjudicator expresses the view that the double rate, provided for in the Factories Act, is probably a penal provision intended to discourage the demand for overtime. It is doubtful whether such a view can be spelt out from the the provisions of the Factories Act. In that Act as well as in other parallel legislation, due measures have been adopted to control the incidence of overtime. Overtime is permitted only upto a particular limit, beyond which it is totally prohibited. This prohibition, probably, is based on the view that human capacity to work has an upper limit, beyond which even the State should not permit the employee to work on any day in any week. It follows from this that, probably, permission for overtime within the prohibited limit is granted because overtime may be necessary in the interest of the industry and because such overtime will not be detrimental to health or efficiency of the worker. It is, therefore, permissible to take the view that the higher rate for overtime is prescribed in the above laws more with a view to compensating labour for the extra effort put in by it and to permit it to share in the higher profit which may be earned by the industry by overtime. Another reason given by the Adjudicator for the lower rate is that there are inherent circumstances in railway work which entail overtime and which are beyond the control of the administrations, such as power failures, derailments, etc. This is a valid reason, but, at the same time, in my opinion, this should not be over-emphasized. The system of averaging has been designed to meet such contingencies and, in any case, when determining the strength of cadres, railway administrations must also pay due attention to the above nature of railway work. The third reason given by the Adjudicator is that overtime is not always connected with staff shortages. It may be that this view may have been justified when the adjudicator was dealing with the subject but, for the reasons already given by me, it cannot be stated with confidence that overtime is not due to such circumstances in the present conditions. I am not impressed by Mr. Mahadevan's argument that if a higher rate is prescribed, abuses are likely to creep in. It is true that, unlike other industries, a railway worker does not work under the direct control or supervision of a supervisor and that overtime is mostly automatic and not, as in other industries, worked at the instance of a manager or an

owner. However, at the same time, it is clear that a worker cannot be allowed to put in overtime of his own accord without any check. A worker cannot be allowed to work beyond statutory limits and, if any further overtime is necessary, an exemption order from the prescribed authority is necessary too. Mr. Mahadevan fears that workers may collude with one another by remaining absent or proceeding on leave in order to accommodate one another to earn overtime. In any case, he says that workers will be tempted to do so. He relies upon the instance mentioned by witness Dutta which occurred at Loco Shed, Ghaziabad, where a number of drivers refused to join duty for untenable reasons and, as a result, other drivers were required to work overtime. Apart from the fact that there is no reason to believe that such conduct is prevalent on a large scale, in my opinion, a lower overtime rate is not the remedy. Obviously, the concerned administration failed to take disciplinary action against the delinquent drivers. Then Mr. Mahadevan contends that the incidence of overtime is not very large. According to him, overtime is confined to such categories as SMs, ASMs, running staff, train examining staff, station class IV staff and cabinmen and that overtime is exacted from hardly about two or three per cent of the total staff. He also relies upon the fact that the amount of overtime payment has progressively declined from 1.13 per cent in 1964-65 to 1.06 per cent in 1969-70. If this is so, then, the occasions for payment at double the rate will be few and far between. But, at the same time, in my opinion, workers who have to render overtime beyond statutory hours, even if they are a few, do require to be adequately protected, specially in view of the evidence on record that overtime can and does arise for avoidable reasons too. Moreover, in my opinion, overtime requires to be reduced for safety reasons. Some of the high-powered Committees have had occasions to express their utmost concern on this score. They have pointed out that exaction of overtime from railway workers and specially running staff is bound up with safety of railway operations and, as far as possible, factors which lead to such overtime require to be eliminated. To secure this aim, in my opinion, it is necessary that after statutory limit is exhausted, a higher overtime rate should be prescribed. For the above reasons, I decide that the rate of overtime should be $1\frac{1}{2}$ times the ordinary rate for overtime worked beyond rostered hours but within statutory limits, and that it should be twice the ordinary rate for overtime worked beyond statutory limits.

Creation of an intermediary classification between Intensive and Continuous

6.65. Mr. Kulkarni submits two refinements in regard to daily and weekly hours of work. It will be convenient to deal with them at this stage. One refinement is that, between the classes of Intensive and Continuous workers, a further classification or classifications of workers may be introduced, for whom the daily and weekly hours of work may be more than those fixed for Intensive classification but less than those fixed for Continuous classification. The second refinement is that the daily and the weekly hours of those railway workers whose work is com-

parable to the work of workers in other departments should be fixed on the basis of the hours of work determined for the latter.

6.66. I am not in favour of any of the above two refinements. In my opinion, no case is made out for the introduction of any more classification or classifications other than those at present recognised by HER. The hours of work of Continuous workers are determined on the basis of what an ordinary railway worker, working under ordinary pressure, should be called upon to work, bearing in mind the various elements which are relevant for determination of such a question. On Indian Railways, the classification of Intensive workers is introduced mainly on the ground that, having regard to the same determinative factors, if such workers were to be called upon to work the number of hours determined for ordinary workers, a point of fatigue will be reached and health and efficiency of workers will suffer to such an extent that those determinative elements will be violated. Therefore, unless such a point is reached, it cannot be said that a case for further reduction of hours from 8 a day and 48 a week is justified. In this connection, it is noteworthy that the demand is not for total exclusion of any category of workers from HER as in the cases of those railway workers who are governed by the Factories Act and the Mines Act. The two refinements are sought to be introduced not for the purpose of excluding any category from HER, but, for the sole purpose of varying the hours of work whilst retaining them in the framework of HER. Therefore, the analogy of those railway workers who are excluded from HER cannot apply. In a large industry like railways, the nature of work and conditions in which it is performed are bound to differ from category to category. If a distinction were to be made between them in regard to hours of work on the basis of the various nuances or differences in physical and mental stresses involved in the work of each category, a very wide spectrum of classification will come into existence and the working hours in each spectrum will have to be determined on the basis of the numerous differences in the physical and/or mental activities involved in the work in each such category. In my opinion, any such attempt cannot yield any intelligent classification or classifications. It can land one only in a series of calibrated classifications-perhaps as many as the number of categories involved in railway working. Moreover, it is obvious that evaluation of physical and/or mental stresses involved in different categories will be a difficult, if not an impossible, task and formulation of exact standards or measures for such evaluation may well-nigh be impossible. Such a scheme can lead to formulation of confusing rosters only and will upset railway working. As I shall presently show, the present definition of Intensive classification is fair and just and that it is based on sound principle that a worker requires to be relieved when the stresses on him are such as will lead to fatigue. In my opinion, if an employment does not satisfy this test, it must bear the general classification, although between such employment and others similarly classified there may be nuances or differences of physical and/or mental stresses.

6.67 Mr. Kulkarni vehemently contends that there are some employments in which application demanded from a worker is more continued and sustained than the one demanded in continuous employment. Mr. Kulkarni specially mentions the cases of such workers as telephone operators, deputy chief controllers, line clear staff at stations where 16 trains pass in a cycle of 24 hours and signallers on non-heavy circuits. In support of this argument, Mr. Kulkarni draws upon the analogy of the weightage recommended by the Second Pay Commission for payment of night duty allowance. That Commission recommends weightage of ten minutes per hour for night duty allowance in the case of those workers whose duty involves continued attention. Mr. Kulkarni says that this recommendation of the Second Pay Commission was accepted by the Railway Board and orders for its implementation were issued by its letter No. PC-60/HW-2/3 dated 7-7-1962. He draws my attention to the fact that some categories for whom he is pressing for lower hours of work are mentioned in this order. He contends that if a weightage is to be granted for payment of night duty allowance on the ground that the duty involved requires continued application, there is no reason why, on the same ground, the hours of work should not be reduced. I am unable to accept this contention. The contention assumes that the duty hours are fixed only on the basis of pressure of work that can be borne by an ordinary worker. As already pointed out, the hours of work are determined on a number of considerations such as social, economic, domestic, health, humanitarian, etc. Intensive classification is based both on the ground that work beyond normal limit requires to be relieved against and that, human body or mind cannot bear strain beyond a particular limit and that exaction of work beyond such limit may result in fatigue and loss of health. Therefore, the search in every case is whether the straining point has been reached or not. If so, the worker deserves to be relieved by reducing his hours of work to escape the danger of fatigue. If such a point is not reached, then, in my opinion, there is no justification for further reduction of hours on the ground that employments are not alike in all respects. Mr. Kulkarni contends that Signallers working on non-heavy circuits should also be classified as Intermediate workers whose hours of work must be less than standard hours of 8 per day and 48 per week. I have described in para 6.160 whilst dealing with the claim of Signallers working on heavy circuits, the duties of a Signaller. I believe it to be fairly established that the work of Signallers requires continued concentration, specially when they use Morse Code and have to transmit figures. However, the fact that a circuit is not heavy implies that there will be periods of respite. The Federation tries to get over this difficulty in its way by contending that work on all circuits is continuous and, therefore, there is no idle time. The contention is that a Head Signaller will not allow any Signaller to remain idle. This argument is supplemented by a further argument that cadres are sanctioned on the basis of workload of each board or office. However, the evidence shows that, on links, the third Signallers are idle. The Federation, however, contends that, even in such cases, the idle Signallers are given work on other circuits. Jagdish Roy deposes to this effect. He says that if

work on one circuit is complete, an idle Signaller is being given work on another circuit. However, it is impossible to postulate with confidence that this will be so universally on all circuits and at all times. Much will depend upon the number of Signallers appointed in a circuit and the quantum of work therein. Under the circumstances, in my opinion, it is not possible to determine on an *ad hoc* basis the periods of respite which such Signallers will have in actual working conditions. In any case, there is no dispute that such Signallers cannot be described as Intensive workers as they do not satisfy the second condition of the definition of Intensive employment. Under the circumstances, in my view, even if there is any basis for the contention that cadres are fixed on the basis of workload of each board or office and that idle Signallers are assigned work on other circuits, the claim made on behalf of the Signallers must be rejected on the broad ground that no case has been made out for carving out, for the purpose of fixation of daily and weekly hours, an intermediate classification in-between Continuous and Intensive workers.

Classification of railway workers comparable to workers in other Govt. Departments

6.68 As regards the second refinement, undoubtedly, it is true that there are some workers on railways who perform duties more or less similar to the duties performed by workers in some other departments. The cases mentioned by Mr. Kulkarni are those of telephone and wireless operators. Such operators also work in the Posts and Telegraphs Department. The telephone operators in the P and T Department work only for 7½ hours with a rest interval for meals for 45 minutes and two recess periods each of 15 minutes, so that the total hours of duty of such workers are 6¼ hours only per day. On the other hand, railway telephone operators, being classified Continuous, work for 8 hours per day and have neither a meal interval nor any recess period. In regard to shift duties in the P and T Department, the principle of averaging is not in vogue. Such a principle applies to railway telephone operators. Overtime is calculated in the P and T Department on the basis of rostered limits of hours of work whereas, at present, on railways, they are calculated on the basis of statutory limits. Overtime is paid in the P and T Department on the daily basis and, on railways on a two-weekly basis. In the P and T Department overall limit of work is upto 45 hours a week whereas, on railways, there is no such limit at all. Railway workers enjoy only three National holidays whereas the P and T Department workers get twelve. A P and T wireless operator is borne on the rosters of 8, 7 or 6 hours whereas a railway wireless operator is borne on rosters of 6 or 8 hours only. A P and T wireless operator has recess periods for meals and tea during day and a recess period for tea in night shift whereas a railway wireless operator has no such recess periods at all. There are some other but minor differences in the working conditions of the two sets of operators. Qualifications for recruitment in the two Departments are different but this is not very vital. For all practical purposes, it can be said that the nature of work performed by the two sets of workers in both the Departments is similar or almost the same. The question

is whether this factor alone is a sufficient reason for bringing the two sets on a par in the matter of hours of work. Mr. Kulkarni relies heavily upon a decision of the Railway Board in regard to the hours of work of telephone operators employed in Delhi DS Office Telephone Exchange. Before that decision, the telephone operators at this Exchange were under the P and T Department but, in February 1953, they were absorbed on railways. When they were employed in the P and T Department, their hours of work, recess, etc., were regulated by the Rules of that Department. After such absorption, they continued to be governed by the same rules upto December 1967, but, thereafter, they were brought under HER and, as a result, their hours of work and other working conditions came to be affected. Therefore, they made a representation to the Railway Board. The Board was good enough to accept their representation. It ordered, in November 1970, that the conditions of work of the operators at the above Exchange in the matter of hours of work etc., should be the same as before. On this analogy, Mr. Kulkarni contends that the same treatment should be accorded to wireless and telephone operators all over Indian Railways. I am unable to accede to this claim on more than one ground. In the first instance, I have no material on record to know why the Railway Board took the decision it did. If the decision was reached on the ground that, since before their absorption, the workers were already enjoying certain conditions and it was not proper to disturb their working conditions on such absorption, the decision may or may not be justified. However, if the decision was reached in acceptance of the general principle for which Mr. Kulkarni contends, namely, that, because the nature of duty performed by the two sets of workers is identical or similar, they should be governed, in the matter of hours of work, by the same rules, I am unable to accept the decision as correct. Such a proposition offends the main principle that workers in one and the same department should, as far as possible, be accorded the same working conditions. Secondly, it is not proper to apply only a few conditions such as hours of work, recess periods, to the two sets of workers. If they are to be put on a par with one another, then, the whole gamut of conditions governing the two sets of workers must be reviewed. The totality of the conditions of service in both Departments must be compared and an independent decision reached as to which set of conditions should be applied to both the sets. In my opinion, it is not proper to pick up and apply conditions governing only hours of work and fail to consider other conditions of service. It is probable that, if such an investigation is made, the decision may be the other way round, viz., the conditions of service prevailing on railways should govern the P and T Department instead of *vice versa* on the ground that those conditions are more just and proper on intrinsic merits. Thirdly, the most vital objection is that, on railways, the work of one category of servants is so much bound up with the work of another category that any variation in the hours of work of one category may affect the work of another. For example, if vital information is required to be transmitted from one branch of a railway to another, transmission will be held up if the operator happens to enjoy rest and is not available for trans-

mission work. Railway work may thus suffer or be hampered. Moreover, an accident or an extraordinary exigency may arise on railways at any time and if, at any such hour, an operator happens to be off duty, then, irreparable damage may be done, not only to railways but also to the general public. Under the circumstances, I have come to the conclusion that the plea for the second refinement must also be negatived.

Travelling Spare on duty

6.69 One of the demands of the Federation is that the existing Rules relating to travelling spare on duty should be radically revised. The Federation says that such Rules are not based on any rationale and that they have been framed more with a view to depriving workers of their right to receive remuneration for every hour of employment. The existing Rules may be summarised as follows : When a railway servant travels spare on duty and is provided by the administration the use of a crew van, the time taken for travel in such van is not counted as duty on the ground that the worker, having been provided with the above facility must be considered to be on rest. As regards railway workers who are not provided with the above facility, the first four hours of travelling spare on duty are totally ignored in the case of all workers. In the case of such journeys beyond four hours, the whole of the excess over four hours is treated as a period of duty in the case of EI workers but, in the case of Continuous and Intensive workers, only two-thirds thereof is considered to be such period. However, if the journey is performed during rostered hours of duty, the whole of the time spent in journey is considered to be a period of duty. In the case of certain travelling staff, such as travelling van clerks, porters and pay clerks who are ordinarily provided with special travelling facilities and required to work for a portion of the time spent in travelling, credit is allowed in full for such of the time spent in travelling during which they are expected to be fairly busy but credit for only 25 per cent of the time is allowed when they have little or no work. Mr. Kulkarni's contention is that the whole of the time occupied for travelling spare on duty should be considered as period of duty. The above rules are based upon the recommendations of the Adjudicator. In its Reply, the Railway Board relies on the reasons given by the Adjudicator. It also relies on sub-para (i) (i) and (i) (v) of Item No. 4, Chapter II of the Report of the Inland Transport Committee, Seventh Session, 1961, under the captions "Definition of Actual Work" and "Deadheading Time" on pages 50 and 53. It also relies on the practice prevailing in Pakistan where no credit is given to running staff who travel from their place of residence to out-stations to pick up trains.

6.70 When a railway worker is required to travel spare on duty, he is first summoned by his superior. The latter fixes his programme of journey, i.e. the train by which he is to leave and the route by which he is to travel. Sometimes, he is required to travel by a goods train or a light engine. The worker cannot deviate from this programme and if he does so, he commits a breach of duty and is liable for disciplinary

action on that ground. In the case of running staff travelling spare on duty, it has to report itself to the SM on duty. Such staff can take charge of a train only after so reporting. According to Sawhney, the normal duration of such travel is about two hours, but, when the staff has to travel to the next marshalling yard for working a return load, the duration is sometimes as much as five to six hours and, in some cases, such duration is upto twelve hours also. Sawhney has narrated the circumstances under which travelling spare on duty is required to be undertaken : (1) to relieve staff which has completed its duty, and this usually happens to be at wayside stations; (2) or vice versa; (3) to travel back to the headquarters where running staff has completed 96 hours of duty outside headquarters; (4) to work a stabled load at a wayside station for bringing it from a wayside station to a yard; (5) to come back to headquarters after so working the stabled load; (6) to bring an engine from workshop to the shed or vice versa; (7) in case of engine failure, one of the engine crew is left on the engine and the rest travel spare on duty to headquarters; (8) when one and the same engine has to be utilised for working a return load, one set of train crew has to travel spare on duty. In the latter case, the train crew which worked the load has to return spare after completion of its duty.

6.71 The Adjudicator gives four reasons for his recommendations on the above subject. They are : (1) when an employee is travelling spare on duty, he is only partially at the disposal of his employer; (2) The employee is not subject to the employer's discipline; (3) such duty must be regarded as normal incidence of service, and (4) except when travelling short distance, travelling in III class involves some fatigue though not the same as on duty. With the greatest respect, in my opinion, none of the above reasons is cogent. The fact that travelling is normal incidence of railway service, in my opinion, instead of being an argument against the treatment of such travel as duty must be regarded to be an argument in its favour. There is not the slightest doubt that when a railway worker is called upon to travel spare on duty, he is required to do so for and in the interests of a railway administration and for running a railway. The circumstances mentioned by Sawhney as the circumstances under which the above kind of travelling is required to be done, do not leave any doubt that such travelling is undertaken on the summons of the employer, at his behest and because it is necessary that such travelling should be undertaken for carrying on railway work. When running staff is on duty, it is so for moving trains from one point to another; when it is required to undertake travelling spare on duty, it does so also for the same purpose, because unless such travelling is undertaken, it will not be able to perform its principal duty of moving trains from one point to another. The circumstance that such staff is not required, during such travelling, to run or move trains is due more to the fact that, under the situation, there is no necessity for performing such work and the employer is helpless to offer any such kind of work. Such helplessness of the employer cannot be used as a circumstance against the employee. I cannot agree with the Adjudicator that a railway worker is not subject to the discipline of railway administration

when he is travelling spare on duty. In my opinion, the facts brought out in the evidence of Sawhney disprove this view. It is true that, during the period of travelling spare on duty, the movements of an employee are not completely devoted to railway duty in as much as such a worker has freedom to do certain things during that period which otherwise he could not have done if he was performing his normal functions. However, for the availability of such freedom, the worker cannot be made to suffer. Moreover, there are several employments even on railways where periods of inaction and even periods of rest and relaxation occur and yet they are never considered periods of non-employment or partial performance of duty. Under the circumstances, in my opinion, the fact that a railway worker, during the above period, has some more freedom of movement than when he is employed on actual duty cannot be regarded as a good ground for according him a different treatment. Apart from above considerations, in my opinion, the main objection against the above treatment is that it is inconsistent with and totally at variance with the main principle which I have accepted as the correct principle viz., that an employee is on duty so long as he is at the disposal of his employer at the latter's instance. In my opinion, when a railway worker is travelling spare on duty, he is at the disposal of the administration at its instance. The mere fact that he is not under the direct supervision of the administration or any of its official during the period of the journey cannot be regarded as a good ground for according him a different treatment. Total or partial freedom of movement is inherent in the nature of the duty entrusted to be performed. Moreover, in some cases, travelling spare on duty may entail greater hardship on an employee than when he is performing his normal duty. When a railway worker is offered work as soon as he reports for duty, he commences to perform his work when he is quite fresh. On the other hand, when he is offered work at the end of a journey, he commences work after the fatigue of the journey. The hardships to EI workers, rest-givers and members of running staff may be still more acute. An EI worker may be called upon to perform duty for 12 hours immediately the journey is completed and before he has had a chance of recouping from the fatigue of the journey. The time he will remain away from the comforts of home will be 12 hours plus the period of journey. In the case of a rest-giver, he may be called upon to undertake travelling spare immediately after he completes his duty at one place and may be required to perform duty as soon as he reaches the place where he has to give relief. In the case of a member of running staff, either before or after the performance of his normal duty, he may be required to travel spare on duty without any time being given to him to recoupe from fatigue of work. Moreover, travelling spare on duty may sometimes be exceptionally inconvenient as the servant may be required to travel on a light engine or in a goods train. Moreover, such travelling may be required to be done not only during day but also during night. Night journey is more irksome than day or duty performed during day. According to Sawhney, the incidence of travelling spare on duty is 7 days out of 30 for running staff. For the above reasons, the Rules on the above subject are unsound, harsh, untenable and unscientific. Moreover, as to

why the first four hours of travelling are totally ignored, there is no explanation. On what principle such four hours, neither more nor less, are fixed, no light is available. It follows that the choice of the number of hours to be ignored is arbitrary. The effect of the exclusion of such time from hours of duty is to deny the employee his remuneration for doing something which is entirely for the benefit of the employer. This is so since a significant number of such journeys are bound to be for four hours or less. It is noteworthy that, the present Rules are more stringent for EI workers than the ones which prevailed before the Adjudicator's Report. Formerly, travelling of EI workers spare was considered as period of duty upto the limit of 35 hours a week. Under the present Rules, the position has been reversed. If an EI worker travels for 6 days in a week, his first 4 hours, i.e. 24 hours of journey, are totally ignored. One of the general recommendations of the Adjudicator is that his proposals were not intended to deprive a worker of a benefit which he may be already enjoying. In spite of the above recommendation, the above benefit was taken away from EI workers. Moreover, under the present Rules, whatever be the number of days in a week, a month or any period of time a railway worker travels spare, his first four hours are not counted as duty, during the whole of such period. A worker may be called upon to travel spare on duty daily or regularly and though this may entail the greatest hardship on him, he is considered not to be on duty. Another infirmity in the existing Rules is that there is no uniformity in the scheme and no rationale for the differences. In the case of EI workers the whole of the excess over four hours is to be treated as duty and as for Continuous and Intensive workers, only two-thirds thereof. As already stated, there is no rationale for this variation. As regards practices prevailing on deadheading on different foreign railways referred to in the Report of the Inland Transport Committee, 1961, paragraph 4(1) (v) of Chapter II, it is clear that only a portion of time spent in travelling spare on duty and not the whole of such travelling time, is totally ignored for calculation of hours of work, in the Regulations referred to therein. However, in Federal Republic of Germany, such travelling time is included in the hours of work. Clause (v) of para 4(1) *ibid* reveals a sharp difference in practices prevailing in various countries. In Austria, deadheading time is counted for 66 per cent of its duration, in the United States for 50 per cent, and in Federal Republic of Germany, the proportion varies from 70 to 80 per cent. However, in France, it is counted in full and in Switzerland, under certain conditions, 50 per cent. What emerges from the observations made in in the Report is that, except in Pakistan, there is no other country where any portion of the time occupied for travelling spare on duty is totally ignored. Under the circumstances, in my opinion, the Rules on the subject require to be radically revised.

6.72 After anxiously considering the matter, I have come to the conclusion that, mainly on the principle that an employee is on duty when he is at the disposal of his employer at the employer's instance and bearing in mind the other considerations as set out in the previous paragraphs, subject to two exceptions, the whole of the period spent for travelling

spare on duty should be considered as a worker's period of duty. When he came to discuss the subject, Mr. Mahadevan, recognising the force and cogency of the arguments against the total exclusion of the above time from period of duty, fairly conceded that, subject to two limitations, the demand deserves to be granted. One of the limitations which he suggests is that, as in the case of payment of daily allowance, time should be excluded from period of duty, unless a railway worker travels on any day beyond a radius of 8 kilometres from the place of duty. Mr. Kulkarni objects to this reservation. He contends that the exclusion of such a distance for payment of daily allowance has no nexus with the subject in hand. However, in my opinion, there is justification for such a reservation. Having regard to modern conditions, every worker has more or less always to travel some distance for reaching his place of duty, I propose to accept Mr. Mahadevan's suggestion. This will constitute the first exception. The second exception is in regard to the provision of crew rest van. It is contended that, when such a provision is made, the worker is so placed as to have rest and relaxation. Thereby he avoids the discomforts associated with travelling by ordinary means of locomotion. Therefore, the two exceptions are (1) that travelling spare on duty will not be considered as period of duty when the worker is given the facility of crew rest van, and (2) that such period will not be a period of duty unless, on any day, the worker travels beyond a radius of 8 kilometres from the place of duty. I may make it clear that if a worker happens to travel beyond the excepted distance, then, the period spent for travelling such distance will be also included in the period of duty.

Excluded Employment

6.73. Section 71-A(c) of the Act defines "Excluded" employment. It says that an employment is Excluded if the employee belongs to any one of the categories specified therein. Sub-clauses (i), (ii) and (iii) thereof specifically mention employees who are Excluded. As no demand is made in regard to these employees, I am not concerned with them. Sub-clauses (iv) to (vi) mention certain categories of staff whose employment may be classified as Excluded by Central Government under Rules made under section 71-E. Acting under these Rules, Central Government has specified categories of staff whose employments are classified as Excluded under the above clauses. I am not concerned with the staff whose employments have been so specified by Central Government as Excluded under Sub-clause (vi). I am not so concerned because no demand is also made in regard to such staff. The Federation, in their original demand, raised certain contentions in regard to categories of staff who were specified as Excluded under sub-clause (v). That sub-clause relates to supervisory staff. The contention of the Federation was that all categories of staff who have been classified as such by Central Government did not belong to supervisory class. However, at the time of arguments, Mr. Kulkarni states that the Railway Board, his Federation and the All India Railwaymen's Federation have arrived at a compromise formula in regard to this matter under the Joint Consultative

Machinery and, therefore, he does not wish to agitate this question in this Reference any more, except that he states that I should consider the validity of certain principles which he has to urge in regard to the determination of the question as to which is supervisory staff. Sub-clause (iv) runs as follows :

“Such categories of class IV staff as may be specified by the Central Government by Rules made under section 71-E.”

Now, acting under this power, Central Government has made Rule 5 specifying the following four categories : (1) Gatemen “C” Class, (2) Saloon Attendants, (3) Bungalow Peons residing at or close to their places of work, and (4) Care-takers of Rest Houses and Reservoirs and other Railway Properties. In regard to these specific categories, the Federation’s contention is that they should be taken off the Excluded classification. The Statement of Demands, however, does not mention as to how the above categories of railway servants are to be treated under HER. In the course of his arguments also, Mr. Kulkarni did not indicate as to how they were to be treated. However, when his attention was drawn to the above lacuna by Mr. Mahadevan, Mr. Kulkarni stated that he would mention specific reliefs which he claims in regard to the above railway servants at a later stage after full consideration. In the course of his final reply, Mr. Kulkarni clarifies that the demand of the Federation in regard to the above categories is that they should be classified as Continuous. The Board opposes this demand. Mr. Mahadevan contends that the present classification is wholly justified and alternatively argues that, even if any change is to be made in regard to the above categories, the same should be on the lines suggested by him in writing. The document submitted by Mr. Mahadevan on behalf of the Board suggests specific rules in regard to each of the above categories.

6.74. Therefore, in regard to the Excluded classification, two questions arise for consideration. The first is, what is the connotation of the term “supervisory staff”? The second is, whether the above four specific categories of railway servants should or should not be taken off the list of Excluded classification and if so, how they should be classified and/or treated under HER.

Characteristics of a Supervisory post

6.75. Washington Convention does not apply to “persons holding positions of supervision or management”. That Convention, however, does not define the expression “positions of supervision or management” nor does it specify persons who hold such positions. The Adjudicator deals with this subject in paragraph 248 at page 79 of his Report Vol. I. In that paragraph, he recommends the following definition : a person is said to hold a position of supervision or management when his employment has been so declared by the Railway Board on the ground that he holds a position of responsibility, is employed in duties mainly of a

supervisory character and is from the nature of his work and position comparatively free to adjust his hours of duty or work during such hours.” The recommendation is not fully adopted in the Act. The Act entrusts the responsibility of specifying persons holding positions of supervision to Central Government and not to the Railway Board. However, the Rules adopt the recommendation with the modification that the deciding authority is Central Government and not the Railway Board. Washington Convention mentions persons holding positions of management as well as those holding supervisory posts. However, I am not directly concerned with the merits or de-merits of the specific inclusion or specific exclusion of persons holding positions of management from Excluded category. Paragraph 2(2)(i) in section VI of the Book, Hours of Employment Regulations, published by Western Railway, contains the following instruction regarding supervisory staff : “Subordinate officials performing work of supervisory nature and who by the nature of work and responsibility entrusted to them are free to fix their periods of sustained attention or physical activity, in accordance with their work, are classified as ‘S’. A list of the categories of staff who may be so classified, provided they exercise supervision in substance is appended as Appendix ‘B’. No addition or alteration to this list may be made, without the Railway Board’s prior approval.”

6.76. The submissions of Mr. Kulkarni are two-fold. His first submission is that a supervisory post is nothing but a managerial post and that, unless a person holds managerial position, he should not be classified as supervisory. According to Mr. Kulkarni, the hall-mark of a supervisor’s job is his capacity to take a decision on a matter of policy. He submits that it is only when such is the case that an employee can be said to hold a supervisory position. I am unable to agree with this submission. I am not concerned with the question whether the concept of a manager as envisaged by Mr. Kulkarni is right or wrong. Even if the concept is presumed to be right, I have no doubt that the post of a supervisor and a manager are not necessarily the same, though, in some cases, their positions may overlap. Probably, because of some such distinction, the term “management” has been separately used both in Washington Convention and in the definition recommended by the Adjudicator. In my opinion, the definition recommended by the Adjudicator brings out all the necessary ingredients of a supervisory post. The question whether a particular post is or is not supervisory must be decided in the light of that definition rather than by the test propounded by Mr. Kulkarni, the test being whether the person concerned does or does not decide questions of policy relating to the concerned industry. The ingredients in the recommended definition are (1) that the person should hold a position of responsibility, (2) that his duties must be mainly of a supervisory character, and (3) that he is comparatively free to adjust his hours of work because of the nature of his work or position. It may be observed that all the three ingredients are cumulative and, therefore, all the three ingredients must be satisfied before a person can be classified as supervisory. Therefore, the

test is not whether a person is or is not a policy-maker or has or has not a share in policy-making, but the test is whether he occupies a position of responsibility. Mr. Kulkarni further contends that the above definition is not precise and that it leaves scope for the rule-making authority to designate a post which is really not supervisory as one. Mr. Kulkarni's objection is mainly against the use of the term "mainly" in connection with supervisory character of the employment and the term "comparatively" in connection with the freedom to adjust hours of work or duty. I cannot agree with these contentions of Mr. Kulkarni. In my opinion, the expression "mainly" is necessary in the definition. If this expression is not used, it will unnecessarily curtail the number of posts which otherwise are supervisory in essence. On railways, there are very few posts which are purely supervisory. This is specifically so in regard to technical and specialised branches therein. In all such branches, as a general rule, a person not only supervises the work of his subordinates but also helps them in their work if rendition of such help is necessary for efficient execution of work or efficient supervision. However, what distinguishes a supervisor from a non-supervisory servant is that the supervisors duties are mainly of a supervisory character. Mr. Kulkarni relies on Note No. 196 on pages 198-199 of the International Labour Code, 1951, Vol. I. The International Labour Office was asked on behalf of Swiss Government whether clause (a) of Article 2 of Washington Convention applies, among others, to the following classes of persons on railways : the general administrative staff, persons entrusted with the supervision of the maintenance of the permanent way, of the goods despatch and train services, and of the locomotive, depot and accessory services. That Government had also simultaneously solicited the opinion of the same Office whether the aforesaid clause applies to certain classes of persons in postal, telegraphs and telephone services. On 11th May 1920, the International Labour Office advised as follows : "That the paragraph [i.e. clause (a) of Article 2] applies exclusively to persons occupying posts involving a considerable degree of responsibility. Thus, on railways, and in the postal, telegraph and telephone services, it applies only to persons really employed in directing the work of others, and does not apply to persons carrying out ordinary office work. It applies, for example, to railway foremen and to all other persons holding posts which do not involve participation in the execution of the work directed by them, but does not apply to foreman of a gang working with his men or to a clerk in the office of an industrial undertaking." Relying on the above reply, Mr. Kulkarni contends that the essential requisite of a supervisor is that a supervisor must direct the work of others and should not participate in the work done by those others. I do not think that it is proper to read the reply in the above manner. The reply is to be read in the context of the question formulated by the Swiss Government and the categories of persons in regard to whom the opinion was solicited. The question soliciting the opinion contained a contrast between persons who participated in the work and those holding administrative posts or working in commercial branches or services. It is in the context

of this contrast that the reply was given. The reply says that supervisors must be those who direct the work of others and not those who participate in such work. In my opinion, the real test which has been propounded by the Office lies in that part of the reply which says that a supervisory post involves "considerable degree of responsibility." It is true that if a supervisor has regularly to do the work done by those whom he supervises, as in the example of the foreman of a gang, he will not be a supervisor. However, it is not correct to say that, in all cases where a supervisor has himself to do some kind of work which necessarily is not of the same kind as that done by the workmen supervised, the person loses the character of a supervisor. The essence of the matter is that the duties must mainly be those of supervision, although occasionally, for efficiency of supervision or for ensuring efficiency of work in his section, a supervisor may have to lend a hand in the work done by the persons supervised. The essence of the matter is that such work must not be the main duty which is emphasized by the requirement that a supervisor is one who can adjust his hours of work. I do not think it is correct to hold that the post loses supervisory character simply because the supervisor is required to participate in the work of the latter kind. Mr. Kulkarni also relies upon the word "definitely" on page 256 of the Adjudicator's Report, Vol. II, used, when describing certain posts in clause (b) of the Annexure printed on page 255. In that clause, whilst enumerating certain posts which are to be considered as supervisory, the following limitation has been added : "when they are definitely employed in a supervisory capacity". I do not think that this, in any way, modifies the definition recommended by the Adjudicator. The above limitation is perhaps added because all or some of the posts described in clause (b) are such where supervision may not be necessarily required always to be done. It was for absence of such a contingency that no such limitation is imposed whilst describing the posts mentioned in clause (a). Therefore, if the essence of the post is supervisory in character, the person occupying the post can be a supervisor if the other conditions are satisfied. In my opinion, it should not be difficult, if one acts honestly, to distinguish a working post from a supervisory post. In regard to some borderline posts, sometimes, some difficulties may be experienced, but, because such a thing can happen, it cannot be maintained that the definition is faulty. If the declaring authority honestly and *bona fide* comes to the conclusion that the person occupying a post, in essence and substance, renders supervisory duties, such a person may be classified as supervisory, although he may also be engaged in some non-supervisory activity in the course of performance of his duties. Mr. Kulkarni may be right in his contention that the third ingredient does not bring out the idea *asto* with whom a comparison of freedom for adjustment of hours is to be made. But, in my opinion, it merely means "relatively" or as compared with the other workers who have no such freedom for adjustment of hours at all. For the above reasons, in my opinion, the criticisms of Mr. Kulkarni against the definition recommended by the Adjudicator do not whittle down its value. I understand that the question of the supervisory character

of a post is at present being decided on the basis of the above definition. In my opinion, that practice is not wrong or faulty.

6.77. Mr. Kulkarni further contends that a person who is borne on a roster can never be regarded as supervisory and that, on this ground, such railway servants as loco chargeman cannot be regarded as supervisory. In my opinion, Mr. Kulkarni is right in his contention. It is quite obvious that, if a person is borne on a roster, he will not satisfy the test of the freedom of adjustment of hours of work inasmuch as, being borne on a roster, he will have to be present at the place of duty during rostered hours. It may be that, in some cases, a person may be able to adjust his work during rostered hours but such a freedom of adjustment of work will not make his post supervisory inasmuch as, in spite of the above freedom, he will not still be able to adjust his hours of duty. The instructions issued by Western Railway and quoted in para 6.75 above, may justify rostered staff being classified supervisory but, in my opinion, this instruction confuses the concept of freedom of adjustment of hours of work with the concept of a similar freedom to adjust work itself. Such a view is not only inconsistent with my above conclusion but is inconsistent with the definition of supervisory staff recommended by the Adjudicator and adopted in Rule 5.

6.78. Mr. Kulkarni also submits that a person borne on a cadre below a certain scale of pay, say Rs. 250—380, cannot be classified as a supervisor. The Adjudicator rejects such a submission. I am in agreement with the view of the Adjudicator. In my opinion, though in some and even in a majority of cases, the scale of pay of a post may give a clue as to the supervisory or non-supervisory character of a post, it is not the real test. The main test is whether the post is or is not a post of responsibility.

6.79. Mr. Kulkarni draws my attention to the posts mentioned at serial No. 9 under the heading Engineering Department, and at serial No. 13 under the heading Mechanical and Electrical Departments, in the HER Book, Southern Railway, at pages 58 and 59. These posts have been classified as supervisory. The first posts are those of PW Mistries in the scale of Rs. 150—240 or above, and the second are those of Mistries in the scale of Rs. 150—240 or above when employed on supervisory duties. Mr. Kulkarni's contention is that the Mistries in the above two Departments do not satisfy the tests laid down in the definition given by the Adjudicator. Firstly, he objects to the classification on the ground that it is based on the scale of pay of the servants concerned. I have already considered the validity of such an objection. Secondly, he contends that the Mistries in the above two Departments do not and can never regulate their hours of duty. This is a question of fact and there is no evidence on record that such Mistries never regulate their hours of duty. Therefore, I am unable to pronounce an opinion about the validity of the contention of Mr. Kulkarni. It is for the concerned administrations to look into the matter and if really it is a fact that the above Mistries have no freedom to adjust their hours of duty or

work, then, their inclusion in the list of supervisors will not be justified. But, in the absence of any evidence on the subject, I am unable to uphold the contention of Mr. Kulkarni.

6.80. I may mention that, on 4th January 1972, the Railway Board, by its letter No. E(I L)/70/HER/16, addressed to General Managers, circulated, in supersession of all previous lists, an exhaustive list of posts which are to be regarded as supervisory. This list excludes the posts of Mistries referred to in the previous paragraph. I understand that this list has been published in implementation of the agreement, already referred to, arrived at between the Railway Board and the two Federations. Mr. Mahadevan contends that the pay-scale of the supervisors mentioned in the list is above Rs. 150—240 and that this should substantially meet the argument of Mr. Kulkarni, even if it is correct, that persons below a certain scale of pay should not be designated as supervisors. However, as it is not necessary for me to express any opinion in this matter, I do not propose to do so.

Excluded classification : its basis and justification

6.81. That brings me to the second question debated in regard to the Excluded staff. The Adjudicator recommends staff to be excluded on one of two grounds (i) that such staff is one which is to be available on call or (ii) that its work is exceptionally light in the sense that its effective work is 6 hours or less in a tour of 24 hours. Mr. Kulkarni does not raise any question in this Reference in regard to the first group of railway servants, but, he says that there is vital distinction between the first and the second groups, inasmuch as the second group is always at the disposal of the employer, that is, tied to its place of duty, and that, therefore, there cannot be any comparison between the first group and the second. He contends that, in fact, the second group belongs to the category of EI workers and the only distinction between the latter and the former is that the work of the Excluded staff is still lighter than that of the EI staff. Mr. Kulkarni contends that the latter difference should not be made a ground for excluding staff altogether from the purview of HER. He contends that the effect of such staff being totally excluded is that it is liable to render duty for 24 hours and has no weekly rest, the inevitable consequence being that such staff is virtually deprived of all the benefits of domestic or social life. He contends that the total exclusion of the staff from HER throws overboard all humanitarian considerations and, virtually, such staff is condemned to serfdom. Mr. Kulkarni contends that there is no parallel for this classification to be found anywhere in the world except Pakistan which inherits the system from the same source from which India does. In my opinion, there is considerable force in what Mr. Kulkarni urges. It is true that Washington Convention excludes certain classes entirely from the benefit of that Convention. However, the classes excluded are of persons engaged in supervisory or confidential capacity. The former are generally free to adjust their hours of duty and the latter, though in some cases they may be required to work for more than

test is not whether a person is or is not a policy-maker or has or has not a share in policy-making, but the test is whether he occupies a position of responsibility. Mr. Kulkarni further contends that the above definition is not precise and that it leaves scope for the rule-making authority to designate a post which is really not supervisory as one. Mr. Kulkarni's objection is mainly against the use of the term "mainly" in connection with supervisory character of the employment and the term "comparatively" in connection with the freedom to adjust hours of work or duty. I cannot agree with these contentions of Mr. Kulkarni. In my opinion, the expression "mainly" is necessary in the definition. If this expression is not used, it will unnecessarily curtail the number of posts which otherwise are supervisory in essence. On railways, there are very few posts which are purely supervisory. This is specifically so in regard to technical and specialised branches therein. In all such branches, as a general rule, a person not only supervises the work of his subordinates but also helps them in their work if rendition of such help is necessary for efficient execution of work or efficient supervision. However, what distinguishes a supervisor from a non-supervisory servant is that the supervisors duties are mainly of a supervisory character. Mr. Kulkarni relies on Note No. 196 on pages 198-199 of the International Labour Code, 1951, Vol. I. The International Labour Office was asked on behalf of Swiss Government whether clause (a) of Article 2 of Washington Convention applies, among others, to the following classes of persons on railways : the general administrative staff, persons entrusted with the supervision of the maintenance of the permanent way, of the goods despatch and train services, and of the locomotive, depot and accessory services. That Government had also simultaneously solicited the opinion of the same Office whether the aforesaid clause applies to certain classes of persons in postal, telegraphs and telephone services. On 11th May 1920, the International Labour Office advised as follows : "That the paragraph [i.e. clause (a) of Article 2] applies exclusively to persons occupying posts involving a considerable degree of responsibility. Thus, on railways, and in the postal, telegraph and telephone services, it applies only to persons really employed in directing the work of others, and does not apply to persons carrying out ordinary office work. It applies, for example, to railway foremen and to all other persons holding posts which do not involve participation in the execution of the work directed by them, but does not apply to foreman of a gang working with his men or to a clerk in the office of an industrial undertaking." Relying on the above reply, Mr. Kulkarni contends that the essential requisite of a supervisor is that a supervisor must direct the work of others and should not participate in the work done by those others. I do not think that it is proper to read the reply in the above manner. The reply is to be read in the context of the question formulated by the Swiss Government and the categories of persons in regard to whom the opinion was solicited. The question soliciting the opinion contained a contrast between persons who participated in the work and those holding administrative posts or working in commercial branches or services. It is in the context

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the standard hours continuously, may not be required to do so always. However, in the case of staff which has been assigned a place of duty where it has to remain on duty for all 24 hours, the matter is entirely different. It is inhuman to ask an employee to remain at his place of duty for all 24 hours even though the work which he may be called upon to do may be comparatively light. Though the work may be light, all the same, the worker remains at the disposal of his employer and he cannot leave his place of duty without committing a breach of discipline, with the consequence that he will have no or very little time to attend to his social and domestic obligations. It is true that such a class of worker has very little effective work to do and, for most of the time, either the worker rests and relaxes or does no effective work. All this appears to be inherent in the job itself. But, in my opinion, on general principles, it is improper that the handicap involved in an employment should be thrown entirely on the employee and that it should confer a right on the employer to demand full time attendance of the employee for 24 hours. It is still more improper that no part of the handicap should be borne by the employer at all. It is because the employee cannot be fully employed, by the nature of his employment, that the exceptional class of EI workers has been carved out. Having regard to the fact that such a worker is always at the disposal of his employer during the hours of his duty, on general principle, there is no good reason why he should not have the benefit of HER and other regulations relating to employment in general. At the most, he may be called upon to work for longer hours than others for the exceptionally light nature of work to be done by him, subject to any ceiling which may be appropriate under the circumstances. This principle is recognised by Washington Convention and is operating on railways since long. However, it is most improper that, on that account, the employee should be called upon to be at his place of duty for 24 hours irrespective of factors which determine the hours of employment for all railway workers. It is exactly to guard against such a contingency that Washington Convention has provided that, in the case of EI workers, the maximum hours of additional work should be fixed also. The latter regulation is necessary in order that fullest play be given to those other considerations which determine the fixation of hours of work, such as domestic, social and humane factors. I have already indicated the trend which prevails in certain other countries about the maximum additional hours of work fixed for EI workers. In India, the additional hours of work are not fixed. Except perhaps Pakistan & Australia, there are no other countries where any railway employee, or any employee, is required to be at the disposal of his employer for full 24 hours. The condition prevailing in Pakistan is perhaps the legacy of the past as it is with us. The hours of work for some categories of workers classified as Excluded on railways fixed in some other countries have come on record. Except Pakistan, where they are required to work for 24 hours and, in England, where the maximum hours of work are 20, in almost all other countries such workers are required to work either in two or three shifts. It is true that, having regard to the fact that such class of workers are required to

work for exceptionally short periods of time, if additional hands have to be employed, there is wastage of man-hours. But, in my opinion, this point may be considered to be valid upto a certain stage beyond which it must be regarded to be as of no validity including financial considerations. As I shall presently point out, in the case of Gatemen and some other categories, the life which they have to lead is more or less that of a serf and the working conditions are not in consonance with the latest international trends on the subject. An employer utilising the services of such a servant cannot be given an absolutely free hand simply because the nature of the employment is such that the employer cannot utilise the services of the employee to the fullest extent. Under the above circumstances, in my opinion, apart from any other considerations which Mr. Kulkarni urges in regard to each of the categories for whom relief is sought under this term, the above considerations alone require that these categories of railway workers should be brought within the purview of HER. Convention No. 14 is also violated in the case of these workers. Although that Convention requires weekly rest of one full calendar day, the above servants, in spite of the fact that they are tied to their places of service for 24 hours, can enjoy rest of only 48 hours in one month or 24 hours in a fortnight. Another consequence of this class of servants being Excluded is that they cannot earn overtime payment nor any night allowance in spite of the fact that they are employed round the clock and thus render night duty also. Under the circumstances, in my opinion, there is a very strong case that these workers should be declassified from the Excluded category and should be treated as Essentially Intermittent servants. I am fully conscious of the fact that railway administrations may have to appoint an equal number or perhaps even more of such railway workers to complete the tour of 24 hours' duty. However, I do not see any good reason why railway administrations should escape this inevitable consequence if it becomes necessary. It is for administrations to undertake an examination of the question as to whether the same can or cannot be avoided either by combination of duties or by bearing the above class of workers on split shift rosters.

Gatemen 'C'

6.82. Railway level crossing gates for road traffic are divided into four classes designated Special, A, B and C. C Class gate is one which is normally closed to road traffic. I understand that there are about ten thousand such gates on Indian Railways. The railway workers who man such gates are known as Gatemen-C Class. They are usually appointed from the cadre of gangmen and watchmen. As a general rule, a gangman is a Continuous servant and a watchman as EI. However, when such a servant is appointed to perform the duties of Gateman-C Class, he becomes an Excluded servant and loses all benefits accruing to Continuous or EI workers. The above posts are interchangeable. A gateman-C Class can go back to work as a gangman or a watchman.

As a general rule, C Class gates are located on tracks far removed from human habitation. Such a gateman is not, as a general rule, posted within a radius of eight kilometres from his home. He is provided with a place of residence called a lodge which, I understand, is the lowest type of tenement provided for any railway worker. This lodge is both a residential place and a tool room. The main duties of such a gateman are to keep the gate closed and locked; to unlock and open it when road traffic requires it to be so done, consistent with the safety of road passengers; to keep a watch over the track near the gate and on its both sides and to see that no men or cattle stray on the track and, if they do, to take prompt measures to remove them from the track. He is also required to show traffic signals when trains pass. He is required to stay for 24 hours at the lodge. He cannot leave, without committing a breach of discipline, the lodge or the place of duty even for a while, unless he is properly relieved. Thus the duties which a gateman performs are those of a watchman and a gate-keeper and are of a responsible character. If he is negligent or slack, disastrous consequences can take place. Two high-powered Committees have had occasion to point out the dangers involved in calling upon one and the same person to perform such responsible duties for 24 hours round the clock. Kunzru Committee recommends that yard-sticks should be evolved to find out if one gateman is enough for 24 hours. Wanchoo Committee expresses concern over the fact that only one person manages such a gate. That Committee considers the subject from safety point of view and recommends that either there should be two gatemen or gates must be unmanned (*vide* para 298 of its Report Vol. II). The Railway Board agreed with this recommendation in the course of its preliminary discussions with the Committee. Mr. Kulkarni rightly complains that, in spite of this agreement, the Board has failed to take any action in the matter. I understand that such is the case because the question has been bound up with the availability of requisite amount from the Railway Safety Works Fund. The States share the above Fund with railways. The States have raised objections to the Fund being utilised for increasing the strength of Gatemen-C Class. In my opinion, the question of availability of the above or any other fund or any objection being raised from any quarter regarding utilisation of any fund for the above purpose is not of any importance or relevance when the question of safety is involved. This is still more so when the effect of such opposition, objection or consideration is perpetuation of exploitation of labour which exploitation violates fundamental principles concerning determination of hours of work. In International Labour Code, Vol. I, page 206, Gateman, except on main lines, is specifically mentioned as one of the instances of EI workers. From the Report of the Inland Transport Committee on General Conditions of work of Railwaymen, page 68, it appears that only in Australia and Pakistan, gatemen are excluded from railway regulations and that, in almost all other countries, they are considered as EI workers. In my opinion, the Federation has made out a good case for excluding Gatemen-C Class from Excluded classification and for giving them the benefits of HER.

Saloon Attendants

6.83. Saloon Attendants are those railway servants who are assigned duties in a saloon. The duties which they perform are of a diverse nature, such as those of a care-taker, a watchman and a domestic servant. They are also responsible for custody and safety of all articles in the saloon. They must stay in the saloon when it is stabled on a journey and travel in it when it is on the move. In some cases, Saloon Attendants are drawn from the cadre of Carriage and Wagon staff. When the saloon is stabled, the work which they have got to perform is of an exceptionally light nature. Saloon Attendants are provided with some accommodation in the saloon itself. Such accommodation is shared with them by classes IV staff accompanying the officers travelling in the saloons. All the same, in my opinion, it is most improper to call upon these servants to be at their places of duty for full 24 hours and thus compel them to remain away from social and domestic milieu and even to be denied comforts of home. In my opinion, the Federation has also made out a good case for removing Saloon Attendants from the classification of Excluded workers so that they may have the benefits of HER.

Bungalow Peons

6.84. Bungalow Peons are those servants who are posted to perform duties of peons at bungalows or residences of railway officers. They are usually drawn from the cadre of peons and are required to be at their places of duties for 24 hours if they reside in or near the premises where they are posted. I understand that such peons were included in the Excluded classification only in 1968. Till 1968, they were governed by HER. In my opinion, there is no reasonable ground for including such bungalow peons in the list of Excluded servants. I do not see any good reason why these servants should be tied down to their places of duties for full 24 hours. The exigencies of service do not demand that such should be the case. I presume that peons are posted at bungalows or residences of railway officers for official work and that their job is to be of use to officers in connection with discharge of their official duties. If this is so, then, there is no reason why, ordinarily, a peon should be tied down at the residence of an officer when the officer himself is away therefrom or when no official work is likely to be transacted or required to be done at such a place. There is also no good reason why still the peon should be at the bungalow of his officer when, ordinarily, the officer is not expected or is not likely to perform duty or when no official work is likely to flow in. I understand that bungalow peons are provided in several Departments of the Government but not a single instance has been pointed out to me where such peons are required to remain at the places of their duties for full 24 hours even when their places of residence are near the premises where they are posted to work. In my opinion, bungalow peons should also be taken off the Excluded classification so that they may have the benefits of HER.

Care-takers

6.85. Care-takers of rest houses and reservoirs and other railway properties are essentially chowkidars.

In addition to this, they attend on visiting officials to rest-houses or reservoirs as and when they visit the same. They are usually given residential accommodation at rest houses or reservoirs where they perform their duties. In the International Labour Code, Vol. I, page 205, a watchman is mentioned as one of the instances of EI workers. In my opinion, on general considerations mentioned above, care-takers of rest houses, reservoirs and other Railway properties must also be taken off the list of Excluded workers and they should be brought within the purview of HER.

Essentially Intermittent classification

6.86. That brings me to one of the main demands of the Federation, namely, that, the classification of Essentially Intermittent employment should be abolished. The definition of such an employment, as given in section 71-A clause (b) of the Act is as follows :

“(b) the employment of a railway servant is said to be ‘essentially intermittent’ when it has been declared to be so by the prescribed authority on the ground that the daily hours of duty of the railway servant normally include periods of inaction aggregating six hours or more (including at least one such period of not less than one hour or two such periods of not less than half an hour each), during which the railway servant may be on duty, but is not called upon to display either physical activity or sustained attention.”

The ingredients for such a classification are : (1) a declaration to that effect by the prescribed authority; (2) the declaration must be grounded on the finding that the daily hours of duty of the servant normally include periods of inaction; (3) that such periods of inaction aggregate six hours or more, and (4) that such periods of inaction must include at least one period of not less than one hour or two such periods of not less than half an hour each. Essentially Intermittent character of an employment is not made dependent upon the nature or character of the employment itself. It is made dependent upon the periods of action or inaction involved in the same. The definition implies that when a railway servant displays either physical activity or sustained attention he is in action. It follows from this that, when he does not display such physical activity or sustained attention, he is not in action. Instructions say that a period of inaction of less than five minutes is to be ignored, meaning thereby that a railway servant is considered to be inaction even if he does not display any physical activity or sustained attention for less than five minutes between two periods of action. If the analysis of an employment shows that the total period of inaction excluding interim periods of inaction of less than 5 minutes is six hours or more, then, one of the conditions for classifying the employment as Essentially Intermittent is satisfied. The definition, however, does not clarify as to within what period of duty the total of six hours or more of inaction is to be calculated. Instructions are that this is to be done in a tour of 12 hours. Even if the above condition is satisfied, the employment cannot be classified as Essentially Intermittent. Another necessary ingredient is that there must be at least one period of inaction

of not less than one hour or two periods of inaction of not less than half an hour each. Both the aforesaid conditions relating to the periods of inaction are cumulative and must be satisfied. If one of them is absent, then, the employment will not be Essentially Intermittent. The concept of physical activity does not present any difficulty in actual practice, although it has not been defined in the Act or HER. The expression “sustained attention”, however, does so, especially because it has not been defined. The Instructions only say that sustained attention involves a mental effort. However, the expression “mental effort” has not been defined too. Two illustrations of sustained attention have been given in the Instructions. One is that of a Station Master and the other is that of a Pointsman. A Station Master, including an ASM, is said to be in sustained attention “from the time he gives ‘line clear’ to the station in the rear till the time the train arrives and again from the time the line clear is asked for to the time the Block Section ahead is cleared.” The Pointsman waiting for the arrival of a train, after setting the points, is said to be “required to give sustained attention.” The prescribed authority for making the declaration that an employment is Essentially Intermittent, has been named as the Head of the railway administration, that is, the General Manager, and, during periods of emergency, an officer not below the rank of a senior scale officer. The declaration by the latter can be only temporary in character.

6.87. The scheme of classification formulated in HER is that railway employment is Continuous except when it is Excluded or is declared to be Essentially Intermittent or Intensive. Therefore, unless an employment is Excluded or is declared to be Essentially Intermittent or Intensive by a competent authority, railway employment must be presumed to be Continuous. The duty of making the declaration is cast upon the prescribed authority. This function of the prescribed authority, besides being highly responsible, is quasi-judicial. Therefore, in order that the declaration may be proper and valid, the formalities requisite for the performance of a quasi-judicial function must be undergone by the prescribed authority. Under the Act, such an authority has to determine, before making the declaration that an employment is Essentially Intermittent, the existence or non-existence of the grounds in such an employment on the basis of which the employment can be classified as Essentially Intermittent. In order to enable the authority to discharge this function, his first task is to gather facts which will enable him to determine whether the grounds exist or not. After having gathered the facts, it is his responsibility to apply his mind and determine whether the above ingredients are or are not satisfied. It is only on his such satisfaction as a quasi-judicial officer that the above grounds exist that the declaration can be made. A declaration that a particular employment is Essentially Intermittent has far-reaching effects on the working conditions of the concerned workers and affects their hours of duty, overtime payment, etc. Therefore, performance of the above function requires care and caution and an objective approach. The duties entrusted by Parliament to the prescribed authority being quasi-judicial in nature, the officer cannot play the role of a partisan for railway administration,

nor can he be moved by such extraneous considerations as financial implications of any declaration or the problems which the railway administration may have to face if he were not to declare an employment as Essentially Intermittent. Rule 4 of the Railway Servants' Hours of Employment Rules, 1961, provides that if any question arises in respect of a declaration, the matter shall be referred to the Regional Labour Commissioner. It further provides that, if any person is aggrieved by the decision of the Regional Labour Commissioner, he may prefer an appeal to the Government before expiry of thirty days from the date on which the decision of the Regional Labour Commissioner is communicated to him. The Rule makes the decision of the Government in appeal final. If there is no appeal, then, it makes the decision of the Regional Labour Commissioner final. Since the definition is based on periods of inaction, it follows that the classification of employment may change from time to time according as the periods of action or inaction in the employment vary from time to time. Thus, the classification of an employment as Essentially Intermittent is not static. Therefore, in order that the spirit of the rule relating to hours of work may not come to be vitiated and in order to avoid hardship to workers, means must be devised for speedy re-classification of an employment which has ceased to be Essentially Intermittent. Having regard to the far-reaching effect which such a declaration has upon the working conditions of a railway servant, this question of devising means of speedy and quick review of classification is also of great importance. Therefore, in determining the controversy on the subject of Essentially Intermittent classification, the following points need to be borne in mind: (1) the presumption is that a railway employment is a Continuous employment; (2) that an Essentially Intermittent employment is an exception; (3) that, therefore, the burden of proving that this is so is on the railway administration; (4) that the prescribed authority in determining that question performs a quasi-judicial function; (5) that an employment can be declared to be Essentially Intermittent only if the conditions mentioned in the definition are held to exist to the satisfaction of the prescribed authority; (6) that the decision of the prescribed authority is subject to the decision of the Regional Labour Commissioner; and (7) that the latter's decision is subject to decision of the Government in appeal.

6.88. Now, Mr. Kulkarni contends that the definition of "Essentially Intermittent" employment is indefinite and imprecise; that the standards for determination of the requisites of the definition are fallible, even impossible or, in any case, difficult to be satisfied; that the procedure which is prescribed or practised for the determination of the question is inadequate and inherently defective; that extraneous factors which are allowed to influence the determination of that question are so many and that the classification ignores humanitarian considerations to such an extent that, even if on principle Essentially Intermittent classification can be justified, it should be abolished altogether on the above grounds.

Mr. Kulkarni's objections to EI classification

6.89. The main objection of Mr. Kulkarni against Essentially Intermittent classification is fundamental,

According to him, the classification is unnecessary and, even if it is not so, it is unfair. In paragraph 236 of his Report, Vol. I, the Adjudicator says that the sole justification for such a classification is "the necessity of (the employee) being present at the place of duty without having to do effective work"—a feature which "is inherent in working of railways". Mr. Kulkarni contends that this ground ill-accords with the fundamental principle for which he contends, namely, that an employee must be considered to be on duty when he is at the disposal of his employer. He says that the moment it is found that the presence of the employee is necessary for the purposes of employment and that the employee joins duty at the behest and for work of his employer, it follows that such an employee cannot be treated differently from any other employee simply because, after such call for duty has been responded to, the employer is not in a position to offer work to the employee. He contends that the rates of pay of all employees are determined on the basis of the duties, responsibilities and skill and if, of two sets of workers both of whom discharge the same duties, one is called upon to work for 8 hours a day and the other 12 hours a day, the result is that the second category of servants gets less pay than the first, although the second performs the same duties, carries the same responsibilities and displays the same skill, the reduction in pay being due to the fact that the employer is not able, for reasons of his own, to utilise in full the services of the employee concerned. He contends that the latter is hardly a good ground for reducing the pay or, in other words, for exacting from him longer hours of work. In my opinion, there is some force in the first contention of Mr. Kulkarni though, as I shall presently show, the result which he seeks does not necessarily follow. For reasons already given in para 6.48, Mr. Kulkarni's fundamental objection to the Essentially Intermittent classification cannot be accepted as valid. I have already considered the true principles which are involved in such a classification. The justification for such a classification is to be found in some of the factors which determine the hours of work. If the fundamental principles which determine the hours of work require that, because of periods of inaction or lightness of work, the employee can put in longer hours of work without detriment to his health and social and domestic life, then, the employer is justified in demanding longer hours of work from his employee, always bearing in mind that the aforesaid fundamental factors are not violated. It is for the latter reason that Washington Convention enjoins fixation of the maximum of the additional hours of work for such employees. The hours of work of Intensive workers are reduced on the same considerations as above, namely, that, because of intensive nature of work performed by the employee, he will not be able to bear the strain for longer hours which are fixed for a worker working under ordinary and reasonable pressure. If the reduction of the hours of work for an Intensive worker is justified on the above considerations, on general principle, I see no reason as to why, based on the same considerations, the employer cannot ask for some longer hours of work from a person whose hours of work do not involve the same strain which is involved in the performance of ordinary work under reasonable pressure. If the matter is considered

from the above angle, it is clear that there is no question of reduction in pay involved at all. The longer hours of work are fixed for the Essentially Intermittent workers on the theory of equivalence to bring their hours of work on a par with those of ordinary workers working under reasonable pressure. In that view of the matter, there is no reduction of pay of such workers. On the contrary, longer hours are necessary in order that both the sets of workers drawing the same pay may put in an equivalent amount of work calculated in terms of effective hours of work. Mr. Kulkarni contends that, when a worker joins railway service, he presumes that he will be a Continuous worker and, therefore, when, at some stage of his service career, he is put in the Essentially Intermittent classification, the effect is that his conditions of service are changed and, in any case, his rate of pay is reduced. Mr. Kulkarni contends that this is not only so in regard to ordinary pay; an EI worker suffers also in the matter of payment for overtime and for night duty. I am not impressed with this line of reasoning. In the first instance, there is no justification for the assumption that, when a railway servant joins railway service, he assumes that he will be a Continuous worker or, in any case, that he will be so all throughout his service career. So long as the above classification is on the Statute Book or is a part of HER, a railway servant knows from the time of his recruitment that he will be called upon to work either as a Continuous or an Essentially Intermittent worker according as his working conditions change. If he assumes to the contrary, he has to blame himself since such an assumption is unwarranted. In that view of the matter, in my opinion, there is no change in conditions of service involved, nor any change in the rate of pay. Then, Mr. Kulkarni contends that, even if the classification is to be retained, it must be retained only in the case of those railway servants who are connected with train movements only or that, in any case, there is no justification for extending the classification to those railway servants who are borne on non-cyclic rosters. This argument of Mr. Kulkarni is based on the justification for essentially intermittent classification which appealed to the Adjudicator. Even if there is any validity in such argument on the basis of the view taken by the Adjudicator, in my opinion, it cannot have any validity if the matter is considered from the point of view that I have done and upon the basis of which a provision in Washington Convention in regard to EI workers is introduced.

Definition of Essentially Intermittent Employment and Mr. Kulkarni's objections thereto

6.90. That takes me to the objections raised by Mr. Kulkarni in regard to the definition of Essentially Intermittent employment. Strictly speaking, some of the objections of Mr. Kulkarni are based not on inherent faults in the definition but they relate to the results arrived at on the basis of the definition when it is applied to facts in the light of the instructions issued by the Board or the practices which have been evolved in the application of the definition to such facts. Some of the objections are based on the existing regulation that the hours of Essentially Intermittent workers shall be 12 per day and 75 per week. Though, in my opinion, some of the latter objections may lose

their relevance and/or may be wholly or partially obviated as a result of my decision that the daily and weekly hours of EI workers should be 8 per day and 48 per week plus additional hours of 2/4 per day and 12/24 per week, I propose to consider Mr. Kulkarni's objections on the basis of the existing regulations inasmuch as the objections were made on that basis and in that context.

6.91. The first objection is that the definition does not indicate the space of time in relation to which periods of inaction are to be calculated. The instructions are that such periods are to be calculated with reference to a tour of 12 hours. Mr. Kulkarni vehemently contends that these instructions are unscientific and unsound. He contends that the administration assumes a duty period of 12 hours—a period which can be fixed only after such employment is determined to be Essentially Intermittent. The instructions are based on the view expressed by the Adjudicator in paragraph 232 at page 74 of his Report, Vol. I. In order to determine the nature of an Essentially Intermittent employment, the periods of inaction may be determined either with reference to the central base of 8 hours a day or the higher base fixed for Essentially Intermittent workers or a tour of 24 hours. It is clear that if the first is taken as the basis for such determination, then, total periods of inaction will be of the order of 75% and total periods of action will be of the order of 25%. It is obvious that this ratio will be extremely high and cannot have been intended to be the true test. The last basis also cannot have been intended as it will be too much on the low side. Moreover, that basis is excluded by the language of the definition. The definition does not speak of periods of inaction in the employment for a day. It definitely speaks of such periods in the duty period of the railway servant. That leaves only the second basis open for adoption. That basis appears *prima facie* to be fair and just. Under it, the proportion of periods of inaction to those of action is of the order of 50 : 50. If the periods of inaction are half or less, it is but fair that the employment should be regarded as Essentially Intermittent. This is very much so if it is remembered that periods of action may include periods of inaction of less than five minutes between two periods of action. In that view of the matter, in my opinion, the instructions based on the recommendation of the Adjudicator are justified. Mr. Kulkarni justifies his submission by giving some instances in which the above criterion, according to him, will cause hardship. He says that even if the job analysis of an employment does not reveal a continuous period of inaction of one hour or two such periods of half an hour each, in a given case, where the total period of inaction is a continuous employment of six hours or less, the above test can be held to be satisfied by assuming that the additional period of four hours is a period of the above type. He contends that, in such a case, a Continuous worker whose period of action falls short by two hours in a tour of 8 may be classified as Essentially Intermittent and thus be compelled to work for a further period of four hours. Second example given by Mr. Kulkarni is that of a trolleyman. He says that the work of some trolleyman has not been job-analysed at all and they are declared to be Essentially Intermittent workers on the assumption that they have either one continuous period of

rest of one hour or two continuous periods of rest of half an hour each. There are certain assumptions in the examples cited which vitiate the conclusions. The validity of the first instance depends upon the assumption that, in the given case, actually there will be no period of action in the additional assumed tour of four hours. If this is not correct, the employment, *ex hypothesi*, cannot be declared as Essentially intermittent. If it is correct, then, undoubtedly it comes within the purview of the definition and the classification will be correct. In the second instance, the result is vitiated by the assumption that the employment is not job-analysed. If it is job-analysed and as it is bound to be so analysed, the true worth of the employment is bound to be revealed. However, even assuming that there may be border-line cases in which the differences of a few minutes on one of the sides may compel a worker to work for four hours longer, the fact that such cases can arise cannot necessarily detract from the correctness or precision of a definition or wisdom underlying it. The classification of Essentially Intermittent employment is not automatic on the determination of the ingredients of the definition. A high authority is required to apply his mind. If there are border-line cases where hardship may be caused or wrong or unjust assumptions are or have to be made, the authority, I feel confident, will deal with such cases by applying the spirit of the definition and by refusing to go merely by its letter.

6.92. Another objection of Mr. Kulkarni relates to the provision of one period of inaction of not less than one hour or two periods of such inaction of not less than half an hour each. Mr. Kulkarni does not object to the above provision itself. In fact, that provision is the core of the definition, for even if the aggregate of the periods of inaction is six hours or less, an employment cannot be classified as Essentially Intermittent unless the requirement of one of the above two kinds of periods is also further satisfied. In other words, unless an employment has a continuous period of inaction of not less than one hour or two continuous periods of inaction of not less than half an hour each, the prescribed authority cannot classify it as Essentially Intermittent. However, Mr. Kulkarni says that, in some cases, periods of inaction may be three periods of 20 minutes each instead of two periods of half an hour each or one period of one hour. He contends that the continuous periods of inaction in the two sets of cases are the same in the aggregate; in one set, the worker will be classified as Essentially Intermittent, and in the other, as Continuous. He contends that though the differences of the strain in two sets of cases are almost nil, the results are different. In my opinion, such a result cannot detract from the value or validity of the definition. Such value or validity cannot be tested by reference to extreme or border-line or unusual cases. Whatever may be the care or caution which may be devoted to or experience brought to bear upon the framing of a definition, some extreme or marginal cases are bound to arise in actual practice which would be required to be dealt with separately in such a way that the hardship involved in the application of the definition is avoided or is resolved in favour of the employee. In my opinion, such cases must be left to be dealt with by the prescribed authority as and when

they arise rather than be provided by attempting an amendment of the definition, or such cases may be dealt with by introducing them by way of exceptions as and when they occur in actual practice. As already stated, the ingredients of the definition are not intended to be applied automatically to facts but they are intended to be worked out in practice by a highly responsible authority.

6.93. Another objection of Mr. Kulkarni is that the expression "sustained attention" which is also a vital part of the definition, is vague and imprecise. Mr. Kulkarni contends that, because of the above defect, in actual practice, the expression is liable to be misused and even abused. As already stated, the expression "sustained attention" has not been defined in HER. Only two illustrations thereof are given in the Instructions. Now, in my opinion, whether an employee is or is not in sustained attention is essentially a question of fact, and it is unwise to put the expression in the strait-jacket of a definition. However, the grievance of the workers is justified that the two illustrations, given in the Instructions, have been petrified, in actual practice, as exhaustive examples; that other cases of sustained attention in railway working are being ignored by job-analysis and that this is being done on the mistaken notion that a railway worker can be in sustained attention only if his work comes within the purview of any of the two illustrations. Two other examples of sustained attention may be mentioned. A section controller is in sustained attention for the time he is at his desk with the head-gear on, waiting to pick up any relevant information regarding train movement or formation or during the time he is engaged in plotting or devoting thought for plotting trains. A cabinman is in sustained attention after he has lowered the signal and has to keep a watch that the path in regard to which he has given line clear to the Station Master remains clear of any obstruction. However, the fact that a faulty practice has developed may be a good ground for remedying the practice but cannot be regarded as a ground for branding the definition as vague or imprecise.

6.94. One more objection of Mr. Kulkarni is that the present practice of excluding only less than five minutes of inaction while calculating periods of action is arbitrary, unsound and *ad hoc*. Mr. Kulkarni relies on the facts that, formerly, on N.W. Railway, a period of inaction of less than 15 minutes was so excluded and that, on the former G.I.P. and B.B. & C.I. Railways, a period of inaction of less than 10 minutes was similarly excluded. He contends that, whilst the Adjudicator had expressed a definite opinion that exclusion of as many as 14 minutes errs too much on the liberal side, he has not expressed any definite opinion as regards the merits or the demerits of the exclusion upto the limit of 9 minutes. Mr. Kulkarni contends that a worker should not be treated as a machine. He pleads for exclusion of a period of less than 15 minutes or, in any case, less than 10, on the basis of the practice prevalent in the past on some railways mentioned above. He also relies on the replies given by some railway administrations to the Questionnaire of the Adjudicator printed on pages 12 to 14, Vol. II, of the Adjudicator's Report

to the effect that exclusion of above periods were just and proper and would not cause difficulties in railway working. He further contends that, in any case, in some operations, an interval of rest of 5 or more than 5 minutes is as much essential as an interval of less than 5 minutes and that, unless such periods of inaction are excluded too, the strain on the worker will be more than what can be measured on the surface and that efficiency of the worker will suffer. However, this argument implies that instruction to exclude less than 5 minutes in calculating periods of inaction is based on the theory that that period is necessary to relieve the worker from the strain of continuous work and is required to give him rest. In my opinion, there is no basis for this assumption. The definition of Essentially Intermittent employment is based on the concept that the total aggregate period of inaction in a tour of 12 hours should be six hours or more and further that there should be either a continuous period of inaction of one hour or two continuous periods of inaction of half an hour each and the instruction of excluding inaction of less than 5 minutes is based more on practical grounds than on any theory that the worker requires to be relaxed after a certain period of work.

6.95. Another objection of Mr. Kulkarni is based on humanitarian considerations. Mr. Kulkarni contends that an Essentially Intermittent worker has to put in service for 12 hours and that such service may involve night duty too; that where such a worker is not provided with quarters at or near the place of his duty, and there is no such obligation on the railway administration to do so, time is bound to be consumed in coming and going to and fro his place of duty and that, having regard to the difficulties of transport, specially in big cities, an EI worker has actually to be away from home for more than 12 hours, sometimes even extending to 14 to 16 hours. He further contends that, in some cases, an EI worker may be required to come earlier or go later for performance of preparatory or complementary work and that, if he is called upon to do such type of work, then, he remains occupied, on an average, for about half an hour more everyday. Mr. Kulkarni also contends that such additional period extends his hours of duty but does not earn him overtime. Thus, contends Mr. Kulkarni, as compared with a Continuous worker, the time that is left for domestic and social life and for leisure to an EI worker is far shorter than that which is available to a Continuous worker and yet he does not earn overtime. He contends that the lot of an EI rest-giver is still worse. After rendering duty for 12 hours, sometimes extending to 14 to 16 hours, such a worker has immediately to make preparations for the next day's duty and, for this purpose, he may have to travel spare, sometimes by inconvenient trains, which period is not counted as a period of duty at all. There is some force in some of the above arguments, but, in my opinion, the above facts are relevant when fixing the upper limit of additional hours for EI workers and they are not good grounds for amending the definition of Essentially Intermittent employment nor are they good grounds for abolition of EI classification altogether. There is also no question of overtime being denied if duty comes to be performed within hours of work fixed for EI workers.

6.96. Mr. Kulkarni also objects to the EI classification on the ground of hazards which it involves to safety of railway operations. He says that a majority of workers classified as EI belong to the Operating Department and Wanchoo Committee has pointed out, in its Report Vol. II para 200, the hazards which the employment of EI ASMs can lead to. The Committee made a suggestion for elimination or reduction of such hazards. The suggestion was that the duties of SMs and ASMs classified as EIs should be made to alternate. The suggestion was accepted by the Railway Board. Mr. Kulkarni, however, contends that the suggestion has neither been nor can it be carried out, at least, in the case of those ASMs who cannot, by reason of the lack of requisite qualifications, perform the duties of SMs. He says that, therefore, in regard to a number of such EI ASMs, the suggestion has not been and cannot be implemented. He contends that longer hours, specially in regard to operating staff, make them liable to commit errors or that human lapses are likely to occur and that such errors and lapses may cause or lead to accidents. He further contends that longer hours cause fatigue; that the work of operating staff is such that it may arise even after the point of fatigue is reached and that, if operating work is required to be done after such a point is reached, specially at or near the end of rostered period when vulnerability of the staff to commit errors increases. He says that both the high-powered Committees—Kunzru and Wanchoo—appointed to investigate into causes of accidents have accepted the above propositions. This is undoubtedly an important aspect. However, in my opinion, the above considerations are not good grounds for changing the definition of Essentially Intermittent employment nor are they good grounds for abolition of the EI classification. Some of the points made out by Mr. Kulkarni may be good grounds for deciding as to what should be the maximum additional hours of work which should be fixed for this classification.

6.97. Then Mr. Kulkarni contends that, because of the use of the word "normally" in the definition of the EI classification, in actual classification of EI staff, loose standards and undue latitudes have come to be adopted. I cannot agree with this contention. The word "normally" is necessary inasmuch as the Essentially Intermittent classification is to be declared on the basis of work done in a normal period of operation. The word "normally" emphasizes this aspect of job analysis. The nature of Essentially Intermittent employment must be determined on the basis of the work performed therein in normal and not abnormal conditions. The nature of inquiry always is to discover what is the normal employment which the employee is required to be engaged in. If the word "normally" were to be omitted from the definition, the omission is likely to work more to the disadvantage of the employee than to the railway administration. Moreover, some of the above objections of Mr. Kulkarni pertain more to the question of the adequacy or inadequacy of the standards employed for making EI classification and has no relevance to the subject of adequacy or inadequacy of the definition of Essentially Intermittent employment or to the subject of classification thereof. The

classification can be effective only if the standards for job analysis are so formulated that the analysis takes place in normal conditions. This is a different question altogether. In my opinion, in so far as Mr. Kulkarni demands omission of the word "normally" in the definition, it is not justified.

6.98. That brings me to an objection regarding EI classification which Mr. Kulkarni submits is the most formidable. The objection is that the methods devised for determining EI employment are so inherently defective and the scope for their improvement is so scanty that the EI classification should be scrapped on that ground alone. Considerable evidence has been led by both sides on this aspect of the matter. I propose to consider this aspect more in detail not only for considering the merits of the above contention of Mr. Kulkarni but also for appreciating his alternative contention that, even if the classification is to be maintained, the present procedure for determining EI classification works to the disadvantage of the workers.

6.99. Before I undertake an examination of the above topic, it will be convenient to mention the procedure at present in vogue for classifying employments including EI employments and to make a few general observations on some broad aspects of the matters.

Necessity of Machinery for timely determination of classification

6.100. The first and the most important point which is to be noticed in regard to the above classification is that, as already stated, it is an exception to classification of Continuous employment which classification is the normal one. A railway worker is to be presumed to be a Continuous worker unless he is declared to be otherwise by the prescribed authority. Therefore, unless there is such a declaration, a railway worker must be classified as Continuous. Now, as already pointed out, such a declaration involves a quasi-judicial determination and demands an application of mind by the prescribed authority with a view to being satisfied that the grounds on which the employment is to be classified as EI exist in regard to the particular employment to be declared Essentially Intermittent. The determination of such a question and the discharge of such a function involve heavy responsibility and, for the proper performance of the function, the establishment of a fair, impartial and adequate machinery is a *sine quo non*. The Adjudicator himself points out the necessity for the establishment of such a machinery. From the evidence adduced before me, I have reason to believe that the expectation of the Adjudicator has not been fully realised. The evidence reveals that some categories of railway servants originally classified as EI have been retained as such without any analysis of any kind having been undertaken to determine whether the classification in their case is justified or whether the grounds, if any, for such classification still exist. Classification of no employment is or can be static. This is especially so of Essentially Intermittent employment. Because of change of circumstances, grounds may arise for

change of classification of employment. After the Adjudicator's Report, not only no adequate and proper machinery was devised for finding out in time the change of such circumstances, if any, but, even after the Amending Act of 1956 was passed, no analysis was undertaken for the purpose in regard to some obvious categories. Two views can be propounded as regards this matter. One is that, after the Amending Act of 1956, if no declaration comes to be made by the competent authority in regard to any category, then, the employment must be considered to be Continuous. It is obvious that, after the Amending Act, if an employment has to be classified as EI, a declaration to that effect cannot be made unless full data is collected by or for the prescribed authority and the authority is satisfied, after undergoing the correct process, that grounds exist for such classification. Mr. Kulkarni urges that, except in the case of Gatemen and Cabinmen, no such process has been undergone by the prescribed authorities. He maintains that, even in the case of Gatemen and Cabinmen, the task of ascertaining their proper classification was undertaken not because the prescribed authorities thought it their duty to do so under the Act, but, it was so done, in regard to Gatemen, because of the recommendation of Wanchoo Committee and, in regard to Cabinmen, because of the occurrence of Dumraon accident. The evidence discloses that, because no such process was undergone, some categories of railway servants wrongly retained their classification as EI and some others their classification as Excluded. The evidence discloses that justice came to be done to some of these classes only very recently, nearly ten or twelve years after the Amending Act was passed. For example, Coach Attendants and ACC Attendants continued till recently to retain their EI classification, though, in fact, they were Continuous workers. Similarly, some members of class IV staff, such as Jamadars, Muccadams and Mates, and some members of class III staff, such as Sub-Head Clerks in Accounts Department and Mistries, continued to retain their classification as Excluded, in spite of the fact that they were not so. These faulty classifications came to be rectified very recently, several years after the Amending Act was passed. The result was that the above set of workers was treated or, as Mr. Kulkarni says, exploited as EI or Excluded workers for a number of years. This happened because a general review, as contemplated by the Adjudicator, was never undertaken to determine whether the existing classifications were or were not justified. Mr. Kulkarni rightly contends that the Adjudicator envisages the commencement of the task of reviewing the classification with the fluctuations in traffic and/or change in timetables and that, in spite of this expectation, in many cases, no such reviews were undertaken by the prescribed authorities. The current practice is to undertake quasi-judicial process only if and when representations for the purpose are made to the railway administrations by (1) individual railway workers, (2) Unions, (3) Labour Enforcement Staff, and (4) staff of HER Inspectorial staff. There is some force in the argument of Mr. Kulkarni that, therefore, no machinery was ever set up after the Amending Act for a general review of EI classification and to ascertain if grounds existed for such classification in particular

cases and that the machinery which has come into existence is a grievance-settling machinery which becomes operative only if and when a grievance happens to be made on the subject of EI classification from one of the above quarters. There is reason to believe that such was not the intention of the Adjudicator or of Parliament. EI classification entails additional four hours of work per day and results in a number of other handicaps to workers. Therefore, a worker who is not really EI but has wrongly been classified as EI suffers injustice. In fact, in such a contingency, railway labour comes to be exploited—a situation which should not be tolerated in any industry, much less so in a Government Department. The evidence discloses that, even in case a grievance comes to be made in the matter, a time-lag occurs between the raising of the grievance and its redress. This is largely due to the fact that the ascertainment of the true nature of an employment requires, in a majority of cases, a detailed job analysis which, if properly done, engages three HER Inspectors for three days continuously. The evidence is that, if job analysis is done for 72 hours in one case, then, an Inspector can, on an average, analyse about 8 cases only per month, provided he devotes himself exclusively to this job. However, the evidence discloses that an HER Inspector is also assigned other work. The evidence shows that, on some railways, a number of cases are awaiting job-analysis. For example, witness Gurlal Singh says that there are 1100 such cases in arrears on Northern Railway. On the basis of the staff at present employed on Northern Railway, it will take several years before the above arrears can be cleared. There is nothing in the evidence to justify Mr. Mahadevan's contention that the arrears on Northern Railway have arisen because a special drive was made by the staff of that railway to trump up false or frivolous cases. There is also evidence to show that, on some railways, because of the existence of substantial arrears, representations were made for substantially increasing the strength of HER Inspectorial staff. Except very recently, no steps were taken for increasing the staff to cope with the arrears of work on those railways. Some witnesses on behalf of the Federation have given facts and figures in this regard. Two specific cases of job analysis have been brought on record. One is the case of the shunting staff at Shamgarh and the other of SM/ASMs on Kotah-Bina section. These cases remained pending for a number of years. It is clear that if in such cases, ultimately, an EI classification is found to be wrong, the concerned railway workers will have worked for four additional hours more than the period prescribed by Parliament not only before grievances were raised but also during the pendency of the cases before the appropriate authorities. It is easy to envisage the hardships the concerned staff has to undergo during the interval not only in the matter of overtime but in such vital matter as working conditions. It is easy to see that the grievance cannot be completely redressed by payment of past overtime. However, the evidence is that overtime is not always paid with retrospective effect from the date the grievance is raised. Only, in some cases, overtime is paid with effect from the date of the recommendation of the Inspectorial staff. In some others, overtime is paid prospectively only.

Methods of job analysis

6.101. The evidence reveals that no precise procedure is prescribed for classification of an employment on any of the railways. However, four methods appear to be in vogue. They are (1) rough assessment method, (2) representative method, (3) method of issuance of a certificate by an executive officer, and (4) factual job analysis. In rough assessment method, the classification is determined on a rough assessment of the employment concerned. Under the representative method, representative stations are selected for job analysis, some by the divisional officers and some by HER staff; the result of the analysis is made applicable not only to the staff of the station the employments wherein are analysed but also to the staff of other stations which the analysed stations are supposed to represent. Under the issuance of certificate method, the prescribed authority relies upon a certificate issued by one of the officers concerned. Maheshwari cites two cases in which employments were down-graded under this method and Srivastava cites the case of the loco-shed staff at Bhimsen in which the classification of the staff was changed under this method. In my opinion, none of these three methods can reveal the true nature of an employment. It is obvious that in rough assessment and issuance of certificate methods, the result may or may not be correct and, in representative method, a great deal depends upon the extent to which the stations or places selected for analysis represent the other stations or places to which the results are to be applied. Moreover, selection by a divisional officer of a representative station may not always be free from official bias. HER staff does not exercise any check to ensure itself that the selected station is truly representative of the stations to which the result is to be applied. Moreover, no rules are prescribed for determining the question when one station can represent another. The above three methods can be usefully applied when quick results have to be obtained and when they are to be used only to obtain *pro tempo* results. However, injustice is likely to be caused if they are used to obtain permanent results, especially if the result is to be downgradation of classification. In my opinion, therefore, the results of the first three methods, especially if they end in downgradation, should be checked by the job analysis method and must be so checked if so demanded by the worker concerned. Of the four methods in vogue, the job analysis method appears to be the most suitable.

6.102. In order to evaluate the efficiency or otherwise of the job analysis method, it is necessary to state the practice followed when that method is used. As already stated, no uniform procedure is prescribed. The practice varies from administration to administration. However, there are some common and salient features of that practice. These may be mentioned. Job analysis is carried out by HER inspectorial staff. The days on which job analysis is to be carried out are selected, according to Gurlal Singh, by the inspector concerned with the concurrence of the competent authority and, according to Mehrotra, by the Divisional Operating Superintendent. According to Mehrotra, the Inspector concerned does not apply his

mind on the subject of the choice of the days although, he says, that the days selected are normal working days. According to Dutta, the Railway Board has not issued any instructions as regards the duration of the analysis. The duration is either 24 hours or 72 hours. In both the cases, analysis is conducted for a period of three days. In the case of analysis of 24 hours, the job is analysed in one shift on one day and is followed by the analysis in other two shifts on the next two succeeding days. In the case of analysis of 72 hours, the work in all the three shifts is analysed on each of three days. According to Mehrotra two or three and, according to Joshi and some others, three Inspectors are engaged in the work. One Inspector may be enough where analysis is to be done for 24 hours, but, two or more Inspectors will be necessary where analysis is to be done for 72 hours. At the commencement of the analysis, the Inspectors first peruse the duty lists of the persons whose employments are to be analysed. The evidence shows that such lists are not always complete and up-to-date in every respect and, in some cases, they are even obsolete. The duty lists are not standardised. All of them do not give a complete idea of the duties performed by the staff concerned, specially in regard to duties of class IV staff in whose respect there is always a residuary clause to the effect that they are to perform such other duties as may be assigned to them by the senior subordinates. According to some witnesses, such duty lists are not available in some cases. According to Srivastava, in such cases, such lists are got prepared from the senior subordinates in regard to duties of class III staff but not in regard to those of class IV staff. There is evidence also to the effect that, in regard to some duties, no adequate idea can be gathered from duty lists. As for example, duties which the station staff performs in regard to attention to public and in regard to correspondence, though mentioned in the duty lists, cannot adequately be measured either from the lists themselves or from job analysis. After the Inspectors have equipped themselves with the above knowledge, they note the periods of action and inaction of the servant whose employment is being analysed. On some railways, forms have been prescribed for this purpose but not so on all. The Inspectors have instructions to ignore periods of inaction of less than five minutes and treat them as periods of action. Except in two cases of SMs/ASMs and Pointsmen, periods of sustained attention, if any, of other railway servants, are not generally treated as such. On Western Railway, instructions are issued to the effect that, when a train halts at the rear station, the period of sustained attention should be taken as ten minutes and, in other cases, it should be regarded as twenty minutes. After such periods have been noted, the same are compared with past records of periods of action and inaction. Past records of six months are compared. If records for such a period are not available, records for the available period are compared for some jobs or some duties. Gurlal Singh says that no such records are available for duties of class IV staff. He also says that the record data differ from category to category. For example, no past record is available in regard to SMs regarding duties performed in connection with unspecified goods trains, motor-trolleys, attention to inspections, control calls for which no

private numbers are exchanged and extra work done in foggy weather and similar situations. Sometimes, past records do not reflect duties performed outside rostered hours. In fact, the weight of the evidence is that, whilst conducting job-analysis, performance of such duties is not noted at all. According to Mehrotra, past records are looked into either to increase or decrease the credit for action or inaction and, according to Gurlal Singh, this is done to conform analytical data to the average of past data. On the basis of the above data, the inspectors prepare a report. This report is then forwarded to executive officer. The latter offers his comments on the report. The evidence is that the executive officer offers his comments in regard to the record of the periods of action and inaction by reference to the yard-sticks of work evolved for the concerned employment. Then the executive officer sends the report to the Divisional Accounts Officer. According to the evidence, DAO, sometimes, raises objections to the proposals for upgrading EI classification to Continuous classification on ground of economy or on ground that the recorded periods of action are longer than those which can be justified on the basis of yard-sticks of work evolved by authorities. The Federation's case is that, on DAO raising an objection, the file becomes stalled at the divisional level and does not move further. However, the weight of the evidence is that the file goes to the headquarters office where it is scrutinised by the CPO and then, ultimately, submitted to the GM. The latter makes the final orders on the file.

Objections against existing practices regarding method of factual job analysis

6.103. At this stage, it will be convenient to consider the objections raised by Mr. Kulkarni against job analysis method. I have already indicated the various methods which are in vogue for determining classification of employments and expressed the opinion that, of all such methods, factual job analysis method appears to be the most suitable. However, a detailed examination of that method reveals that it is also not free from deficiencies. Therefore, in order that the method of job analysis may give a just and proper result, a serious attempt needs to be made to avoid pitfalls. Now, in evaluating factual job analysis method, it is important to bear in mind the primary objective of an investigation in regard to classification of an employment. The primary objective is to collect factual data so that the prescribed authority may be enabled to perform the quasi-judicial function of classifying the employment. Now, in order to enable the prescribed authority to perform that function efficiently and well, it is absolutely necessary that the data-collecting authority should have an objective approach and that it should collect the data, untrammelled by any extraneous consideration whatsoever. In order that this object may be achieved, it is necessary that the data-collecting authority should be independent and impartial and free from official interest and bias. Two conflicting suggestions can be made on this subject. One is that HER classification machinery should form a part and parcel of the railway administration and the other is

that it should be a separate organisation under outside control. On this aspect, though there is some evidence that the data-collecting machinery, in some cases, has exhibited official interest or bias, on the whole, in my opinion, there are not sufficient materials on record to justify the conclusion that the same has not played or that it cannot play its role in the best interests of all concerned. However, in order that any doubt on this point may be removed and a confidence generated amongst railway servants that the organisation will hold the scales even, in the matter of the collection of data, in my opinion, if, instead of the organisation being placed under the direct control and supervision of the district officials, it will be better if it is placed directly under the control and supervision of the prescribed authority, *i.e.* the G.M. or an officer immediately below him in the hierarchy, so that the chances of promotion of HER Inspectorial staff may not be made to depend upon the reports of the district officials but that they may be made to depend upon an assessment of its work by the prescribed authority itself or some other high officer—preferably an officer who has had not only administrative but quasi-judicial experience also. In my opinion, this is necessary to eliminate any possible influence which may be exercisable by district officials on some of the irrelevant grounds which have come to light on the basis of which classification of railway servants may come to be made to their disadvantage. The second important point is about the adequacy or inadequacy of HER Inspectorial staff. There is some evidence on the subject to justify the conclusion that, at least on some sections, the strength of such staff is not adequate. The existing staff is not only meant for adjudication work but also required to enforce HER and perform some other administrative duties. It is necessary that HER staff should be entrusted solely with their own work of classification of employments, that the administrative work in connection with HER should be separated therefrom, that the work in connection with the enforcement of HER should be entrusted to the administrative staff and that HER staff should not have anything to do with it. This is necessary for more than one reason. In the first instance, as HER staff is proposed to be placed directly under the GM, this re-adjustment is necessary. Secondly, having regard to the necessity for keeping a strict watch in regard to changing conditions which may necessitate investigation into the question whether change of classification is necessary and the necessity for eliminating the time-lag between investigation and decision, it is necessary that a separate cell should be organised for this purpose. Moreover, it is also necessary that the proposals made by some Divisional Officers for increasing HER staff should be looked into and decided promptly. On the basis of the evidence, I can say with confidence that, on an average, an Inspector can do factual analysis in regard to eight cases only per month approximately. The strength of HER staff will have to be determined on this basis to clear off the existing arrears and also on the basis of the work which is expected to arise in future and, the necessity for keeping a constant watch over conditions which may require change of classification. Another point relevant in regard to the adequacy of the staff is that, unless the prescribed authority has applied his mind and classified an employment as

Essentially Intermittent, the concerned staff must be considered to be Continuous. Therefore, it is necessary that, after the Amending Act, at least, there should be one review of the classification of those who are being borne on EI classification historically. The evidence discloses that such a general review has not been made by resort to any of the four methods in regard to many employments, although nearly 10 to 12 years have elapsed since the passing of the Amending Act, about a quarter of a century since the Report of the Adjudicator and more than 20 years since the promulgation of HER, 1951. In my opinion, it is in the interests of the railway administration itself that this huge task must be completed as speedily as possible, for, in the absence thereof, it may be difficult for the railway administrations to challenge claims which may be made by particular staff on the ground that, although it is Continuous, it is being treated as EI and that such a treatment constitutes a violence of the statutory provisions. It may be that, in order to cope with this huge task initially, all or any one of the other three methods which are in vogue and which are designed to give quick results, may be adopted, but, in my opinion, ultimately, in order that the classification may be done in the true spirit of the legislation on the subject, it is necessary that factual job analysis method should be followed, at least, in the cases of those railway servants who raise objections to the declarations based upon those other three methods. I am fully aware of the fact that General Managers who are the prescribed authorities have too many duties, and some of them perhaps of greater importance than the duty of determination of classification and have very little time to devote on the subject. However, the above duty is also important and, in order that it may be adequately discharged, in my opinion, the magnitude of the problem justifies the entrustment of the task to a trained officer with legal and judicial training at the headquarters to whom the power of classification of the GM may be delegated. This will have the effect of relieving the GM of a part of this important duty and, at the same time, assuring the staff that, as far as possible, wrong classification to its detriment will be avoided and that, in case of change of circumstances, classification will be reviewed from time to time. Moreover, HER staff can be placed under the control and supervision of such an officer. If such an officer has not full time work, he may be entrusted with some other duties but, if the main function entrusted to him is that of determination of classification, then, in my opinion, he will be able not only to decide the question of classification to the satisfaction of all but may be able to lay down precedents for the guidance of HER staff and solve a number of problems which must necessarily arise in practice because determination of classification is not merely a question of fact but, involves, also questions of law and fact. There is reason to believe that, at present, because there is no definite procedure prescribed in the matter of such determination, different railway administrations decide one and the same problem in different ways. In some cases, even the practice prevailing in different divisions on one and the same railway differs and, as a result of these differences, the same problems are decided in different ways by the same prescribed authority. In my opinion, if there is a central organisation

at the top of each railway administration of the above type and the matters are dealt with by one and the same officer, it will be possible to eliminate diversities in decisions and it will be possible also for the introduction of a uniform practice in all divisions, and under the guidance of the Railway Board, different practices and procedures evolved by different administrations may all be considered either at a conference of such officers or at the Railway Board level and instructions issued to streamline HER organisation with a view to having uniform and well-considered decisions.

6.104. The second deficiency which has come into prominence is that staff, vitally interested in the result of the investigation for classification, is not, at any stage, associated with such investigation, nor is it given an opportunity at any stage to offer its comments on the collected data. Till the declaration is made, the matter is treated entirely as more or less a matter with which administration alone is concerned. In my opinion, this is not in accordance with the spirit behind the above legislation and the fundamental fact that duty entrusted to the prescribed authority is quasi-judicial. It is probable that association of staff at earlier stages of the investigation may lead to some difficulties and even interference in the collection of data. However, in my opinion, once the data have been collected by HER staff, a copy thereof must be furnished to the staff concerned, so that it knows from an early stage of the investigation as to facts which have been collected in regard to its employment and it may offer its own comments in the matter for consideration of the prescribed authority. I do not see any harm in adopting this particular procedure. Not only this but, in my opinion, having regard to the fact that the employee has been given the right of presenting an appeal to the Government and that the decision arrived at by the prescribed authority has not been made final but is made subject to a review by the Labour Commissioner and an appeal to the Government, it is necessary that the point of view of the staff in the matter of the collection of data on the basis of which, ultimately, the decision must necessarily be recorded, should have an opportunity of having its say in the matter. This procedure will enable the prescribed authority to have a complete picture before him, so that he will have the point of view of the concerned staff and will be able to decide upon the merits or demerits of any comments which may have been offered by his subordinates or on objections raised by the concerned staff on the collected data.

6.105. Now, as regards the period for which job analysis is to be conducted, in my opinion, an analysis for a period of 24 hours is not sufficient and does not give a correct idea of the true nature of an employment. In selecting the period and also the days for conducting job analysis, it is necessary to bear in mind that Parliament intends that normal nature of an employment should be determined. This cannot be done unless the period selected is sufficiently long and the days selected are normal days. I am glad that the Railway Board has, on 3-3-1971, issued instructions that factual job analysis should be conducted for 72 hours. I understand that this instruction

has not yet been implemented because the proposal involves creation of new posts. In my opinion, involvement of additional expenditure is no good ground for not carrying out the above proposal. Facts must be gathered at least for a period of 72 hours consecutively. It follows from this that one HER inspector will not be able to do this job. The minimum number which may be required may be two, provided each of the inspectors is required to do duty for 12 hours on each day of job analysis. If this is not feasible, then, at least, three inspectors will be necessary to perform the above job. At present, the days are selected, at least, in some divisions, by district officers. Though it is not improper to consult district officers as to which days are normal working days, in my opinion, the final voice in the matter should be that of HER staff and not of district officers. HER staff should fix the days of analysis on its own assessment after bearing in mind the report of district officers and, if necessary, referring to other documents and consulting subordinate officials and the members of their staff. The present practice of inspectors perusing duty lists appears to be sound. However, in order to make the fullest use of this practice, it is necessary that the senior subordinates must prepare duty lists in regard to the concerned employments and supply the same to inspectors in advance. Instructions should be issued to this effect. As regards the instruction that a period of inaction of less than five minutes should be ignored, in my opinion, there is no need to make any change therein. I am not in agreement with Mr. Kulkarni's contention that this instruction has been issued on the basis that, after every period of action, some rest is necessary to avoid fatigue or to maintain efficiency. In my opinion, there is no basis for this contention. If such were the basis, then, it follows that the length of the period of action which should precede the period of inaction will also have to be fixed. In my opinion, the short period of less than five minutes is disregarded on the practical ground that it will be inconvenient to measure shorter periods and to note them. This is more by way of concession to the employee than otherwise. Strictly speaking, according to the statutory definition, such periods do not require to be ignored. According to the definition, the total period of inaction has to be measured and, on the basis thereof, EI classification is to be determined. Under the circumstances, in my opinion, the fact that, on some railways, before the Report of the Adjudicator, longer periods of inaction were ignored cannot be made a good ground for retention of that practice on those railways or extension thereof to other railways.

6.106. Another objection of Mr. Kulkarni is that, whilst periods of action and inaction are noted, periods of mental effort or stress are not noted except in the case of periods of sustained attention. I do not think that it is necessary to do so. Of course, if the classification involved is Intensive, then, the factum of stress is an important item to be considered. But, if such a classification is not involved, there is no reason why periods of mental effort should be noted, in view of the fact that, having regard to the definition of Essentially Intermittent employment, no such question falls to be considered. As regards

periods of sustained attention, I have already mentioned above that the current practice of treating the two illustrations given in the Instructions as exhaustive of cases of sustained attention is not correct. It will be a question of fact in each case as to whether, though a railway servant is not physically active, he is or is not in sustained attention. If there are any such periods, HER staff will have to note the same. In the absence of any such noting, if the concerned staff has any grievance, it will have to carry the matter up to superior authorities, and the latter and, ultimately, the GM will have to give a decision in the matter on merits.

6.107. The practice on Western Railway, standardising periods of sustained attention in some particular cases, does not appear to be sound. This practice may reduce somewhat the work of collection of data but, in my opinion, there is no good reason for such standardisation. Standardisation comes in the way of revelation of the true nature of an employment. Therefore, the actual period of sustained attention should be noted in the sheet in every case.

6.108. Mr. Kulkarni further contends that the current practice does not make any allowance for physical and physiological needs of the staff and that, some allowance must be made for this purpose, as it is impossible that a railway servant should be continuously working for a period of 8 to 12 hours without such needs being attended to. The evidence on this subject does not give a clear idea as to the present practice on this subject. However, I take it that if, during the course of the factual analysis, a railway servant has to leave his place of duty genuinely for any such physical or physiological need and if, as a result of an overall view of the three-day analysis, it becomes necessary to ignore any such interruption, the same will be dealt with by HER staff on its own merits. In my opinion, having regard to the definition of Essentially Intermittent employment, it is not possible to lay down any rule on the above subject which should govern all cases.

6.109. As regards comparison of the collected data with past records, in my opinion, the current practice cannot be objected to in view of the fact that the definition requires the determination or ascertainment of the normal nature of an employment. However, the present practice is not uniform as to what use is made of past records. According to Mehrotra, they are looked into for increasing or decreasing credit of periods of action or inaction and, according to Gurlal Singh, they are so done to conform the analysed work to the average of past records. There is justification for the criticism of Mr. Kulkarni that the latter practice may interfere with the correct assessment of the nature of an employment. The usefulness of past records lies in the fact that they help the investigator to determine some such questions as whether the actual work done during the period of analysis is done in a normal way or is unnecessarily or unusually prolonged or whether there is any variation therein or whether it is due to decrease or increase of workload or whether there are any other items of work done at the concerned station which did not come to the notice of the inspector on the three days of job analysis. In my opinion, it is not

proper to evaluate past records in a mechanical manner, as though an average is to be struck. The final objective is to determine the nature of an employment and it is in that spirit that past records should be looked into and evaluated. As far as possible, if duties on the days in question have been honestly and properly performed and periods of action are not dishonestly prolonged, then, past records should not be used against the employee concerned because the variations in the periods of action and inaction may be due to a number of diverse factors which, unless investigated into, cannot be made good grounds for interference. In my opinion, it is improper to interfere with the result of the job analysis by reference to past records in the above manner whilst assessing the nature of an employment. However, past records may reveal certain other occasional types of work, such as preparation of Returns and certain other duties which, though performed in normal circumstances, do not come actually to be performed on the days of the analysis. Such a revelation should be borne in mind in the final review of the totality of the work. The evidence discloses that, in a case where job analysis does not reveal an item of work but the same is found to have been done in the past as disclosed by past record, the practice is to arrive at an average of the period of time devoted to such unrevealed item of work. Mr. Kulkarni contends that this practice is not proper. According to him, in such a case, the maximum of the time devoted for such item of work as shown in past record should be given credit for. I am unable to agree with this contention. In my opinion, no hard and fast rule on the subject should be and can be laid down. It will be for the job analyser to evaluate the time in the light of the materials available from past record and, if there is any grievance, the same must be settled, ultimately, by the competent authority. It follows that the contention of Mr. Kulkarni that, in the case of a comparison of an item of work observed at the time of job analysis with the same item of work as reflected in past record, the maximum of the time found to have been devoted in past record should be recorded as a true guide, must also be rejected.

6.110. Mr. Kulkarni says that one period of rest of one hour or two periods of rest of half an hour each cannot always be revealed in a job analysis. He says that, in any case, past records cannot reveal such periods of rest. I have no materials to form an opinion on the latter subject but, in my opinion, a detailed job analysis done for a period of three days for 72 hours continuously cannot miss such periods, if any, and, if for any reason, such periods do not occur on any particular day, it will be a question of fact to be investigated on a proper representation being made whether such is ordinarily the case in regard to the concerned employment or not.

6.111. Then Mr. Kulkarni says that executive officers measure periods of action with reference to yard-sticks evolved for creation of posts and, sometimes, artificially reduce periods of action on the ground that such yard-sticks have not been complied with. He submits that periods of sustained attention have been standardised in an artificial manner.

In my opinion, if periods of action are reduced on any such abstract consideration, then, the practice is not justified. However, one of the important questions which HER staff has to consider, when evaluating the data of job analysis, is whether action in regard to a particular work was or was not deliberately and intentionally prolonged with a view to gaining an advantage against the administration. Therefore, I do not see any harm if the executive officer is permitted to offer his remarks in regard to a particular piece of work with reference to the yard-sticks evolved. However, there will be a legitimate cause for grievance if such standards are applied mechanically with a view to measuring periods of action. When such a question arises, it will be the duty of HER staff to consider the matter on its own merits and determine whether the period or periods of action actually measured on the days of the analysis do or do not need to be revised on the ground that the periods actually taken in the performance of actions were artificially prolonged. I am not in agreement with the submission of Mr. Kulkarni that HER staff has no jurisdiction to do so. In my opinion, it is the function of the quasi-judicial authority to determine and evaluate, on a review of all the data available to him, the nature of an employment. However, if and when any such question is raised by an executive officer, then, an opportunity should be given to the concerned staff to make a representation as to why, at the station concerned, the yard-sticks cannot be complied with and, if a case to that effect is made out, there is no reason why effect should not be given to whatever just and proper conclusion is arrived at in the matter.

6.112. The next step in the evaluation is the submission of the papers to DAO. The evidence is that that officer also raises objections to the proposed classification on grounds mentioned above and also on grounds of economy. Mr. Kulkarni's submission is that a DAO is not concerned with the question of classification and the file should not go to that officer at all. I do not see any good reason why papers should not be submitted to the concerned DAO and the prescribed authority should not have the benefit of the experience of that officer. However, at the same time, it is incontrovertible that any objection on ground of economy or financial implication of a proposed classification is entirely irrelevant. When determining the nature of an employment with a view to its classification, such questions are beside the point. Either an employment is Continuous or Essentially Intermittent. If it is the former, then, it cannot be classified as Essentially Intermittent because, in so classifying, railway will have to incur additional expenditure for which no funds are available or which, on grounds of economy, the railway administration should not incur. Parliament, in its wisdom, has fixed the standards for determination of the question as to which employment is Continuous and which is Essentially Intermittent and decision should be taken on the subject strictly on the basis of the definitions contained in the Statute and not on the basis or ground of economy or finances. Once the definitions are complied with, they must be given effect to, irrespective of what expenditure will be involved or what other consequences will follow to railway administrations.

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6.113. That brings me to the question of the way in which marginal cases are being dealt when determining classification of EI employment. The evidence is that those cases are treated as marginal where the total period of action in a tour of 12 hours exceeds or is less than 6 hours by a few minutes, ranging from 10 to 15 minutes. According to Joshi, if the total period of action in a tour of 24 hours is 11 hours 40 minutes, the case is classified as EI. No objection can be taken to this classification. Joshi says that if the total period of such action is 12 hours and 20 minutes in a tour of 24 hours, then, he recommends the case to be classified as Continuous, but, according to him, DAO objects to this recommendation. According to Mahalingam, if the period of action in one shift is 6 hours and 10 minutes, then, he recommends the case to be classified as Continuous but DAO objects and the recommendation comes to be dropped. According to Srivastava, if the marginal excess is less than 10 minutes, his practice is to ignore the same but that, if the variation on higher side of EI classification is of the order of 10 to 15 minutes, then, there are instructions to see if the excess time can be adjusted by transferring the work from the job analysed to another job. Strictly speaking, having regard to the statutory definition, the moment a job analysis reveals that the total period of inaction is 6 hours or more, the job must be classified as EI and no valid objection can be taken to such a classification. However, in determining a classification, it is necessary to bear in mind that a job analysis may not be perfect or the days selected may not have been quite normal. For one reason or another and, having regard to the fact that the difference in hours of work of an EI and a Continuous worker is as much as 4 per day, it is but proper if one does not become dogmatic in his approach, especially having regard to the fact that stake involved for the employee is very high. Therefore, the practice followed by Srivastava of ignoring the excess of 10 minutes is unsound. However, having regard to the statutory definition, I am unable to recommend anything positive on the subject. All that I can say positively is that, in marginal cases, the prescribed authority has a duty to scrutinise the data of the job analysed with great care and caution, if necessary by going into greater details or even by ordering a re-analysis or by applying even other tests such as are pointed out in para 6.101 above. However, the more important question is whether the practice, referred to by Srivastava, is correct, i.e. the practice of down-grading a classification to EI, where job analysis justifies Continuous classification by distribution of the excess of 10 minutes of work among the other workers. *Prima facie*, the practice may appear to be violative of the spirit underlying the definition. Just as an administration is justified in classifying an employment as EI though the marginal deficiency is only 10 minutes in the aggregate period of inaction, similarly, it should feel itself bound, on a parity of reasoning, to classify an employment as Continuous even if the marginal excess is only 10 minutes. However, there is one more principle on the subject which it will be improper to ignore—the right of the administration to distribute duties among workers in the best way it deems proper. This right cannot be challenged. In that view of the matter, the practice cannot be challenged too. However, even if this right

is conceded to the administration, the job must be treated as Continuous till suitable or correct re-distribution of duties actually takes place. Moreover, it is equally clear that the re-distribution cannot be made unless the effect of such re-distribution on the job to which the excess time is to be transferred is studied and it is determined whether the classification of that job is or is not affected. The Shamgarh case reveals that there can be a great time-lag between the date of job analysis and the date of re-distribution of duties. Even if there is no time-lag, it is quite obvious that, during the *status quo ante*, the employee, in whose job the excess time comes to be transferred to another job at a later stage, will be a Continuous employee and it will be a breach of the Statute to treat that employee as EI during the interval. Therefore, the administration can exercise its right of re-distribution of duties with effect from a future date only and it is bound till that time to classify the employment as Continuous and to give the worker in that employment all the emoluments, allowances and privileges due to him as a Continuous worker.

6.114. In some cases, job analysis for three continuous days may reveal that the work of two days justifies an EI classification but that of the third day does not so justify it. According to Mehrotra, in such cases, the practice is to classify the job as Continuous. However, Shamgarh case shows that this is not a universal practice. In my opinion, in a case of the above type, the job should be classified as Continuous as it cannot be stated that the normal character of the job is EI.

6.115. Files of two classification cases are on record. One relates to shunting staff at Shamgarh Railway Station and the other to the SM/ASMs on Kotah-Bina section. In Shamgarh case, the job of the shunting staff was analysed in 1967 and, as a result thereof, the staff was downgraded from Continuous to EI. The shunting staff made a representation to the effect that the conditions prevailing on the days of job analysis were abnormal owing to slow movement of coal from collieries. Therefore, a second job analysis was ordered. Such analysis was conducted from 4-9-1969 to 7-9-1969. The analysis revealed an average period of action of 13 hours and 36 minutes in a tour of 24 hours and 6 hours and 48 minutes in a shift of 12 hours. This analysis was accepted by the Divisional Superintendent and concurred in by the DAO. Consequently, the former recommended Continuous classification. When the papers of the case were sent to headquarters office a query was raised whether time could not be saved by making certain modifications in shunting work. Those modifications were made and, thereafter, the papers were sent back to headquarters office. Thereupon, headquarters office raised another query as to whether an explanation can or cannot be given for the differences arising between the job-analysis of 1967 and that of 1969. It was asked as to what factors had led to the change in the effective work in those two years. The reply of the DS was that there was coal shortage in 1967 and, that therefore, abnormal conditions prevailed and that the job analysis in 1969 was made under normal conditions. Headquarters office, however, was not satisfied with the above reply and it ordered a fresh job analysis with which

an inspector from headquarters and a traffic inspector were associated too. The third job analysis was carried out from 23rd November, 1970 to 26th November, 1970. On the 23rd, the job analysis was begun at 12 hours though the shift began at 8 hours. On the 25th/26th, in the shift of 20 to 8 hours, the effective work was for 58 minutes only and, on the 26th, in the shift of 8 to 12 hours, the effective work was for 5 minutes. However, a remark was made on the file to the effect that, on the 26th, no shunting train had arrived in the relevant part of the shift of 8 to 12 hours and that, therefore, the conditions were abnormal on that day. However, no such remark was made as regards the effective work done on the 25th. No comparison was made with reference to past record. The result of the analysis was that, in a tour of 24 hours, the effective work was 8 hours and 9 minutes and, in a tour of 12 hours, it was 4 hours and 4 minutes. When the papers went up to the COPS, instead of noting the abnormal condition under which the work was done on 26th and without making any inquiry as to the nature of conditions of work on the 25/26th, the COPS remarked that DS should have conducted an analysis of this kind "carefully so that we do not violate the need for economy".

6.116. In Kotah-Bina case, four stations in the section were involved. A recommendation was made to upgrade the staff from EI to Continuous. When the papers of the case were placed before the COPS, he raised certain objections. These were (1) that the time taken in running the ballast train, light engine, shunting engine and trolley should be omitted, (2) that the time taken for the movement of train should be according to the time-table, (3) that the commercial work should have been done during the period of sustained attention, and (4) why the times of taking over and handing over at different stations differed. In regard to the latter, the COPS made inquiries from other divisions. He was informed that the time varied from less than 15 to 45 minutes in various divisions. As regards Shahdhoragaon station, there was no mention whether there was rest period of one hour or two rest periods of half an hour each involved. However, ultimately, the periods of action were reduced from 8 hours and 16 minutes to 6 hours and 14 minutes on the ground that the times taken for the operational work and the commercial work were more than those justified by yard-sticks and a further period of one hour and 11 minutes was deducted on the ground that the time given for passing trains was more by that much time on the basis of the time-table.

6.117. In my opinion, Shamgarh case brings into prominence the following defects in the evaluation of job analysis or approach thereto in reaching final conclusions : (1) the first analysis in 1967 was accepted as correct though conditions prevailing during days of job analysis were not normal; (2) the fact that the third day of the second job analysis in 1969 was abnormal was overlooked, and (3) that, though, *prima facie*, the work done on the 25th was also done under abnormal conditions, this fact was ignored. The most disconcerting feature of the above case is that the question of classification was hanging fire since 1967 for a number of years. In spite of the facts

that the second analysis was accepted as correct and that the further inquiry was intended to be made only to ascertain if the excess time could not be eliminated by making modifications in shunting work, the staff was continued under E1 classification, though it was obvious that, till the suggested modifications were accepted and approved, classification of the concerned staff could only be Continuous under the Act.

6.118. As regards Kotah-Bina case, the following deficiencies are noticeable : (1) that no credit was given for working light engine, trolley, ballast trains and shunting engine; (2) that the job analysis was not checked with reference to past records; and (3) that actual time consumed in doing certain effective work was deducted on the ground that it did not conform to the time permissible on the basis of fixed yard-sticks without factually ascertaining whether the time consumed in the above section was actually required or not irrespective of such yard-sticks; (4) The above case further reveals that the time of handing over and taking over was re-adjusted, on *a priori* considerations. Thus, the case of the Board that credit is given for the actual time taken for taking over and handing over stands discredited; (5) similarly, the case also reveals that the contention of the Board that credit is given for all train movements, including light engine, trolley working, ballast trains, shunting engine, etc., is not wholly correct.

6.119. Mr. Kulkarni refers to one more point on this subject. It refers to the question as to from what particular date a change of classification should be given effect to. At present there does not appear to be any direct instruction on the subject. Indirect instruction thereon is to be found in Subsidiary Instruction No. 21(ii) under the heading "Overtime Payment." That instruction is to the effect that overtime should be allowed, if due, for extra hours of work, if any, from the date of orders of the competent authority sanctioning the higher classification for so long as it is not possible to implement the sanction by the provision of extra staff. The instruction further says that if, in a particular case, the circumstances which necessitated the revision of classification were in existence over a long period, sanction to the revised classification shall be allowed with retrospective effect from suitable date to be specified. It will be noticed that the instruction is in regard to those cases only where a classification is upgraded. It does not deal with all changes in classification. Having regard to the fact that, under the Act, classification of an employment depends upon a declaration to that effect by a competent authority, it is obvious that railway administration will be justified in giving effect to change of classification from the date of declaration only and, therefore, in the case of both upgradation and downgradation, the change must necessarily be made effective from the date of the relevant declaration. From this stand-point, the first part of the above instruction does not appear to be objectionable. However, though under the Act, the crucial date is the date of declaration by a competent authority, labour will be justified in contending that effect to change of classification resulting in upgradation should not be given from the date of declaration

as that will be offending the spirit of the Act. Record is replete with evidence to the effect that there is a time-lag between the date of demand for upgradation and the date of job analysis and from the latter to the date of declaration by a competent authority. The latter part of the above instruction makes a provision which may meet, to a certain extent, the grievance of the labour which may arise because of such time-lags. However, since the instruction makes the matter discretionary, the evidence discloses that there is no uniformity of practice on the subject. Because of the above state of affairs, orders passed for payment of overtime consequent upon upgradation of classification have been and are bound to be a source of friction between railway administrations on the one hand and their labour on the other. One justifiable approach to the problem is that, since the analysed job had the characteristic of higher classification at least on the date of the job analysis, the concerned job should be upgraded with effect at least from the date of the job analysis, the time-lag between that date and the date of declaration being regarded as due to inevitable routine processes over which neither the administration nor the labour has any control. In my opinion, there is considerable force in the argument that, therefore, the latter time-lag should be totally ignored. A railway worker whose employment is classified at a grade lower than justified suffers numerous disadvantages, although administration may not be blamed for the same as the lower classification may have been retained because the administration may not have had a chance of ascertaining the correct facts for want of a proper investigation. One may also take into account that, in the reverse case where a classification has to be downgraded, railway administrations also suffer from certain disadvantages for which there is no remedy. However, all the same, in my opinion, once it is discovered on the date of job analysis that the job demands a higher classification, having regard to the *raison d'être* of the legislation for classification, the employment of the concerned railway worker must be declared as belonging to a higher classification from the date of the job analysis at least. In my opinion, it will be unjust not to recognise this position. Even payment of overtime does not entirely do away with the damage that the railway worker concerned suffers from. Under the circumstances, I have no doubt whatsoever that, in the case of a higher classification, retrospective effect should be given to the classification from the date of job analysis, *i.e.* overtime should be paid from that particular date till railway administration is able to make provision for extra staff. Such a provision will also, to a certain extent, eliminate lethargy which may be responsible on the part of the administration for time-lag between the date of job analysis and the date of declaration by the competent authority. However, the above proposal does not entirely eliminate injustice inherent in the situation when there are inordinate time-lags between the date of demand for upgradation of classification and the date of job analysis. In my opinion, some suitable provision also requires to be made to prevent inordinate and unnecessary delay between both the above points of time and to prevent damage being done to the concerned railway workers during the

above periods. In my opinion, time-lag of six months between the date of the receipt of demand from or on behalf of the concerned worker or workers and the date of job analysis will be reasonable and if there is any loss of time thereafter, labour should be suitably compensated for. In making suitable provision for this, one has also to bear in mind that delay may not be entirely due to the fault on the part of administrations but it may also be due to that of the employees. Therefore, I decide that if there is a time-lag of six months or more between the date of demand for upgradation of classification and the date of job analysis, the competent authority may determine as to how much time-lag for upgradation of classification was necessary and inevitable and may use his discretion as to from what point of time retrospective effect should be given to his declaration but that, in my opinion, where the time-lag between the date of demand for upgradation of classification and the date of job analysis is a year or more, then, the concerned competent authority shall give retrospective effect to his declaration from a date not later than six months from the date of demand for upgradation of classification. In my opinion, the above provisions will put both the sides on an even keel and meet the ends of justice.

6.120. However, in order that administrations may not be flooded with false and frivolous demands for upgradation of classification and, in order that such demands may not hamper and delay administrations in the investigation of genuine claims for upgradation, in my opinion, a provision needs also to be made to the effect that a competent authority may, in his discretion, for reasons to be recorded in writing, summarily dismiss a demand for upgradation on the ground that the same is false and frivolous or if it happens to be made within two years from the date of rejection of an earlier demand in regard to the same job and, in his opinion, the claim does not disclose good and sufficient grounds justifying such a fresh investigation into the claim. However, a specific provision should be made that, in all such cases, the concerned party will have a right of appeal to the Labour Commissioner. In case the order of the competent authority is reversed by the appellate authority and if, ultimately, the demand results in upgradation of classification, effect shall be given to such change of classification from the date of demand or, if the appellate authority so directs, from a date not later than six months after the date of demand for upgradation of classification.

Consideration of some more arguments for and against EI classification

6.121. The Railway Board argues that abolition of Essentially Intermittent classification will mean wastage of man-power and, in support of this argument, it relies upon conditions prevailing at Ramtek and Helem stations, particulars in regard to the latter of which have been given by the Railway Board in Annexure VII to its reply. In my opinion, the objection cannot be sustained on this ground for more than one reason. In the first instance, the above ground is inconsistent with the main principle that an employee must be considered to be on duty when he is at the disposal of his employer at the employer's instance. Secondly, it is not proper

to introduce a classification on the basis of extreme cases like those prevailing at Ramtek and Helem. I am not convinced that conditions of work prevailing at Ramtek and Helem are representative of those prevailing on railways as a whole. According to para 195 of Wanchoo Committee's Report, Vol. II, out of 7,600 and odd stations, only SMs and ASMs of 1,146 stations are classified as EI. Of these 1,146 stations, at 874 stations, 7 or more trains pass and, at 272 stations, the number of trains ranges between 3 and 6. The Report also shows that, at some of the above stations, ASMS deal with 4 to 24 trains and that, at one of them, they deal with as many as 64 trains and that, at some other stations, they are so fairly busy in train running that they have hardly any time left for other types of work. Therefore, it is clear that, from out of 7,600 stations on Indian Railways, whose operating staff is classified as EIs, only 272 are stations where only 3 to 6 trains pass and that only 38 are stations where 3 or less trains pass. Therefore, a break-up of the above figures shows that the size of the problem of the kind contemplated by the Railway Board is so small that it cannot be considered as a good ground for justifying the above classification.

6.122. Mr. Kulkarni contends that, even if there was justification for EI classification in 1950-51, the workload has increased to such an extent between 1950-51 and 1969-70 that justification for EI classification has ceased and that that classification ought to be abolished now automatically on the broad ground that, because of increase in the workload, the periods of inaction in a tour of 12 hours can never aggregate 6 hours or more. The Railway Board does not dispute that there has been substantial increase in workload on railways. I have had occasion to consider some aspects of the increase in railway workload while discussing some other Terms of Reference. There is no doubt that, between 1951-52 and 1969-70, there has been tremendous, if not phenomenal, increase in railway workload. A substantial portion of the capital-at-charge, during the three National Plan periods, has been invested in railways. However, the Railway Board's case is that, with this increase in workload, there has been commensurate increase in railway staff too and also a corresponding upgradation in classification of railway employees. In order to substantiate this position, the Railway Board relies upon certain figures given in Annexure V to its reply. Mr. Kulkarni challenges this submission of the Railway Board. Substantially relying upon the same statement, Mr. Kulkarni submits a series of fresh statements, C-1 to C-6, in order to substantiate the points on which he challenges the above submission of the Railway Board. The Railway Board contends that the number of railway workers during the period 1951-52 to 1967-68 has increased from 9.23 to 13.63 lac. Mr. Kulkarni does not dispute this factual position, but, he contends that this increase is deceptive for the following reasons. Firstly, he contends that the increased figures include staffs of certain railway establishments such as Chittaranjan Locomotive Works, Integral Coach Factory, Diesel Locomotive Works, Railway Electrification and DBK Projects, which staffs were not included in the 1951-52 figures since the above establishments were not in existence.

in that year. Secondly, he contends that the increased figures also include figures of increased staff of Class I and Class II railway servants and increased staff on open lines and increases in contract and casual labour. He says that those figures also include increases in single shift workers and that the increases comprise of a majority of those staff which staff are not in fact and cannot be classified as EI workers. Mr. Kulkarni further contends that, in order to meet his challenge that there has been no increase in the number of workers commensurate with the increase in workload, it is necessary to concentrate on the increase in staff in such main departments as operating and commercial. Therefore, he contends that it is increase in passenger kilometrage and volume of goods traffic which should be compared with increase in the concerned staff with the above departments. Mr. Kulkarni contends that the increase in the passenger kilometrage during this period has been 70 per cent and that in the volume of goods traffic in net tonne kilometrage has been 150 per cent. According to him, though this is so, increase in the staff connected with the above departments has hardly been of the order of 21 per cent. Between 1951-52 and 1967-68, wagon increase has been of the order of 79 per cent. Staff affected by this increase is Carriage & Wagon staff, Trains Clerks and some other staff. He further contends that increase in passengers originating has been of the order of 90 per cent, and that in passenger kilometrage of 70 per cent. He says that the staff affected by this increase are booking clerks, ticket checking staff and others directly dealing with passengers. According to Mr. Kulkarni, increase in the operating and commercial staff is of the order of 21 per cent. Mr. Kulkarni further contends that quite a large proportion of increase in staff is due to certain extraneous factors which factors have no connection with increase in workload on existing stations. For example, he says that, during this period, as many as 5,000 new stations have been opened and the route kilometrage has increased by 10.3 per cent. He says that these new stations will require new station staff to man them. He further says that the consequent increase in route kilometrage will necessitate employment of more Permanent Way staff. Mr. Kulkarni submits that the new station staff which will be required to be employed will be of the order of 20,000 and the new staff necessary to be employed on the permanent way will be of the order of 15,000. Mr. Kulkarni further relies on the statement made at page 72, paragraph 46, of The Review of the Performance of Indian Government Railways, May 1971, that though the workload increased from 1965-66 to 1969-70, the staff strength has remained more or less constant. As regards the upgradation of classification, the Railway Board contends that 4,000 posts have been upgraded from EI to Continuous during 1966-67 to 1967-68. Mr. Kulkarni contends that the upgradation is not due to a revision of the EI classification because of increase in workload but it is due to the increase in the cadre of running staff. He also points out that the increase is also due to the fact that some of the existing categories which were wrongly classified as EI had to be removed from that classification because their classifications were wrong. He cites

the instances of Coach Attendants, ACC Attendants, Mobile Night Patrolmen and Travelling Ticket Examiners. Mr. Kulkarni further relies upon the statement of the Railway Board in paragraph 9 of its Reply to Term of Reference No. 8, in which it contends that the burden on SMs and ASMs has recently increased more than the burden on Guards C. Mr. Kulkarni also relies upon the fact that, in spite of this, no revision of classification of SMs and ASMs at wayside stations has been made. There is force in the arguments of Mr. Kulkarni. However in my opinion, those arguments do not help in resolving the controversy regarding abolition of EI classification. The point to be decided is whether increase in railway workload has increased the periods of action in the EI employment and if so, whether, because of such increase, such employment should now be classified as Continuous. Therefore, in my opinion, the facts and figures supplied by the Railway Board and the statistics culled on that basis by Mr. Kulkarni cannot help one to decide the above point. The real point for consideration is whether increase in railway work has affected an existing employment in such a way that the employment ceases to satisfy the conditions laid down for EI classification. There cannot be any doubt that this query cannot be answered unless increase in workload is considered in regard to each individual employment. The general increase cannot help one to answer the query. Even an increase, departmentwise, cannot help one to do so. It may be that, if a representative analysis is made, certain broad categories of employment may be found to have been affected in such a way as to justify a presumption that they have ceased to satisfy the ingredients of EI classification. But, unless this is done, no firm conclusion can be reached on the subject. Therefore, such facts as increase in work and responsibilities of station staff, introduction of commodity-wise or junction-wise shunting, or increase in the number of gangmen, though they may demand or justify a fresh investigation into the employment of such categories with a view to finding out whether upgradation of classification is or is not necessary or though they may demand or justify undertaking of factual analysis at representative centres, it is not possible to postulate merely from the fact that railway work has tremendously increased that, therefore, EI classification should be abolished altogether. In my opinion, the only conclusion which can emerge from increase in railway workload is that efforts should be made to find out the impact which increase in workload has had on the concerned staff and proper job analysis should be conducted to decide as to whether EI classification of the affected employments ought or ought not to be retained or upgraded. Under the circumstances, I have come to the conclusion that the demand for abolition of the Essentially Intermittent classification based upon increase in railway work is not justified.

6.123. It is true that retention of EI classification cannot be justified on the grounds which appealed to the Adjudicator. However, the retention of such classification is justified on broad principles mentioned in para. 6.48 above and on the ground

that such classification has been internationally recognised (*Vide* Article 6 of Washington Convention and Article 7 of Convention No. 30).

6.124. I may be permitted to mention that though, on principle, I have held that EI classification is internationally recognised and is justified, the task of determining the nature of an EI employment is not easy and involves a number of difficulties, the most important of which is that of evaluating the true nature of an employment. As is inherent in every human institution, in performing the task, errors are likely to be committed. Moreover, discriminations in the matter of hours of employment in regard to workers working at one and the same place are bound to fray the tempers of those who have to put in longer hours and to breed discontent. Under the circumstances, in my opinion, wisdom lies in adopting suitable methods by all railway administrations with a view to ultimately eliminating altogether EI classification and, in the meantime, to take all such measures which may reduce, as far as possible, the number of Essentially Intermittent employments to the minimum number possible and even if the retention of the classification is necessary and essential, to explore ways and means for converting EI employments into Continuous employments.

Some more aspects of EI classification.

6.125. There are two more aspects of EI classification which require consideration. One is as to whether EI classification should be based upon the character and nature of an employment or whether upon periods of action and inaction in an employment, whatever its character and nature may be. The second point for consideration is as to what should be the maximum additional hours of work which should be fixed for such classification. I notice from the literature produced in the case that, in a majority of the countries which ratified or followed Washington Convention, by far and large, it is the nature or the character of an employment which determines EI classification. For example, the employments of Watchmen, Door-keepers, Gatemen, Boiler-Attendants, Enginemen, Electricians, have been considered to be Essentially Intermittent on the ground that intermittent work is inherent in such employments and that such intermission is essential or necessary. However, though this is so, I am not convinced that EI classification should necessarily be confined to employments which are inherently so intermittent. In my opinion, on general principle, there is no valid ground as to why, in a large and diverse industry like railways, an employment, otherwise Continuous, should not be classified as EI when it becomes Essentially Intermittent by virtue of the fact that the work which the employer offers is not of a continuous character and is inter-spersed by periods of inaction. Therefore, there is no good reason to change the definition of EI classification by elimination of the concept of periods of action and inaction. This concept is prevailing on railways since hoary past and, in my opinion, has stood the test of time.

6.126. Mr. Kulkarni says that a job analysis may reveal that one shift may justify EI classification and another shift may not. Though no such concrete

instances have been quoted, theoretically, it is possible that such a case may arise in actual practice. If it does so arise, I have no doubt that the shift in which the ingredients of EI definition are not satisfied cannot be classified as EI. It is obvious that, in such a contingency, the two shifts will have to be treated differently. However, I do not propose to pursue the matter further because there is no evidence to show that a shift, the job analysis in respect of which reveals it to be Continuous, is not being classified as such on the ground that job analysis of another shift reveals it to be EI.

Fixation of hours of work for E.I. Employments

6.127. The next question for consideration is about the number of maximum additional hours of work which should be fixed for Essentially Intermittent employment. Before I undertake a consideration of this subject, I wish to clarify that this subject should not be mixed up with the question of the total number of hours which workers in a particular employment falling within the category of Essentially Intermittent should be required to work. The number of maximum additional hours represents the ceiling for Essentially Intermittent employment and should not be regarded as necessarily the number of hours which each and every worker classified as Essentially Intermittent should be called upon to work. The fixation of the total number of hours in each kind of Essentially Intermittent employment is an independent question by itself and this question deserves to be decided on its own merits, bearing in mind the fundamental fact that, for an ordinary railway worker working under ordinary pressure, the hours of work are fixed at 8 per day and 48 per week. As already stated, this problem is dealt with on some foreign railways by employment of one of two methods—the method of co-efficiency and that of longer hours. Under the first method, a co-efficient is found for the actual work which a worker performs and his hours of work are then equated with reference to the co-efficient which will make them equivalent to the standard of 8 hours a day and 48 hours a week. There are some drawbacks in these two methods which affect their value and usefulness. It is not easy to find a co-efficient which will bring about a just equivalence between the actual work involved in a particular Essentially Intermittent employment and the work done in a continuous employment for which the standard hours of work are fixed. The equivalence determined is bound to be *ad hoc*. Similarly, when the method of longer hours is employed, the longer hours fixed are bound to be *ad hoc* too. Fixation of a uniform number of longer hours may not bring about a just equivalence in the case of each and every kind of Essentially Intermittent employment. On those railways where the concept of hours of work is regarded as a composite idea, the hours of work are calculated in one of four ways, particularly with regard to those of operating staff on railways. These ways have been mentioned at page 49 of the Report of the Inland Transport Committee, 1961, on General Conditions of Work of Railwaymen under the caption "Methods of Calculating Hours of Work in the Railways" as follows :

(a) on the basis of its constituent elements;

- (b) as an average over periods of varying lengths;
- (c) as an equivalent of given distances travelled;
or
- (d) according to the category of staff concerned.

Method (c) may not be useful for fixing the hours of those railway employees who do not perform running duty. Method (d) may be employed in the case of those Essentially Intermittent workers whose work is of exceptionally light nature and consists of very few periods of action, such as (1) Class C Gatemen, (2) Saloon Attendants, and (3) Care-takers of Rest Houses and Reservoirs etc. Except such exceptional classes of workers, in my opinion, fixation of hours of work in regard to any particular occupation on railways may as well be tested by one of the above other methods by the prescribed authority. It will not be proper to be dogmatic on a subject of the aforesaid kind. Under HER, a period of action of 6 hours in a tour of 12 has been fixed as the standard for Essentially Intermittent classification. Thus the ratio of periods of action and inaction which has been fixed by HER is 50 : 50. I suggest that, whilst actually fixing the hours of work for any particular Essentially Intermittent employment, it will be useful if the aforesaid ratio is borne in mind, especially when dealing with marginal cases—cases which fall on the border lines of Continuous and Essentially Intermittent employments. In my opinion, therefore, subject to the ceiling of maximum additional hours which I propose to fix, it will be better if the prescribed authority, does not call upon an Essentially Intermittent worker to work for more than double the period of action involved in his work as disclosed in the job analysis. Therefore, if an employment is determined to be Essentially Intermittent on the basis of the definition given in HER, the next task which the prescribed authority will have to undertake will be, what is the total number of hours which the workers engaged in such employment should be called upon to work? The answer to this question depends upon a number of factors, some of which I have already mentioned previously as methods or standards evolved on foreign railways for equating actual hours with standard hours of work. Thus, the hours of work arrived at by the rough and ready method of the hours of work being limited to double the time or period of action may be further tested by any of the above other methods or systems, if the prescribed authority so chooses. If the figure so arrived at is less than the maximum standard hours of work of 8 and 48 per day and week respectively plus the maximum additional hours to be fixed hereafter for Essentially Intermittent employment, then, the total number of daily and weekly hours so arrived at will be the standard hours of work for the concerned Essentially Intermittent employment. However, if the hours so arrived at are more than such standard hours plus the maximum additional hours, then, the hours of work will have to be reduced to a figure of 8 hours per day and 48 hours per week plus the maximum additional hours determined hereafter.

Fixation of maximum additional hours of work for EI employment

6.128. Now, it will be convenient to take up for

discussion the question about the number of maximum additional hours of work to be fixed for Essentially Intermittent employment. HER do not fix hours of work in terms of standard hours and maximum additional hours. They fix hours of employment in terms of total hours of work per week for all Essentially Intermittent workers, irrespective of the occupations they are employed in, *i.e.* once an employment is declared to be an Essentially Intermittent employment, the total number of weekly hours get automatically fixed. The hours so fixed are 75 per week. Rosters have been prescribed for 12 hours of work per day. Thus, if the above hours of work are to be retained, then, with reference to the standard hours of daily 8 and weekly 48, the number of additional hours of work for Essentially Intermittent workers will be 4 additional hours of work per day and 27 additional hours of work per week. The question for consideration is whether the present additional hours of work should be retained or should be reduced. As already pointed out, Washington Convention does not give any guidance in the matter. In paragraph 6.56 above I have referred to some legislative and other provisions which can give guidance in the matter. I have referred to the Factories Act and said that the maximum additional hours permitted for intermittent work in that Act is 10 per day inclusive of rest intervals and that that prescription is further hedged in by some conditions. I have also said that the norms which were considered permissible by the Preparatory Report for Washington Convention included a maximum of "60 hours a week in the case of permanent exceptions", which includes Essentially Intermittent work. I have also said that Convention No. 30 fixes the ceiling of 10 hours per day and 60 hours per week for Essentially Intermittent workers.

6.129. The Railway Board relies upon the Adjudicator's Report in support of its contention that the existing hours of work for Essentially Intermittent workers are just and proper. Therefore, it is necessary first to examine the arguments adduced by the Adjudicator for fixing the total number of hours for Essentially Intermittent employment. Firstly, the Adjudicator says that, having regard to the work which SMs and ASMs at roadside stations perform, 12 hours' duty "will not be a very great hardship" specially because SMs and ASMs are given quarters to reside near their places of duty. Secondly, the Adjudicator says that, having regard to the light nature of work which Essentially Intermittent workers have to perform, there will be a considerable wastage of manpower unless Essentially Intermittent workers are made to work for 12 hours. I am not convinced about the validity of the second argument. It may be a good argument for retention of Essentially Intermittent classification, but it cannot have any or much force when considering the question of fixation of maximum additional hours. In paragraphs 6.35 to 6.37, I have discussed the factors which have a bearing on this subject and have expressed the opinion that the general elements set out in paragraph 6.36 should be the governing factors and that, in any case, no ceiling can be fixed which is inconsistent with factors such as social, civic, domestic and humanitarian. As regards the first

argument of the Adjudicator, it suffers from a fallacy, inasmuch as it draws a general conclusion from particular premises which are applicable only to a given set of circumstances. The roadside stations on the basis of which that conclusion is drawn are such extremely light stations as Ramtek. I am by no means convinced that the conditions which prevail at stations like Ramtek and other stations referred to by the Railway Board in Annexure VII of its Reply are representative of the conditions obtaining at all stations on railways. It is important to notice that the maximum additional hours are to be fixed not only for workers at wayside stations but for all railway employees who have to be classified as Essentially Intermittent, wherever they may be working. The evidence shows that such workers are to be found even at large and junction stations. However, though the above criticisms are legitimate against the conclusions arrived at by the Adjudicator, there are one or two circumstances which may be borne in mind in arriving at a conclusion just to both sides. In the first instance, having regard to the principles enunciated by me in the previous paragraph, the prescribed authority will have to fix the maximum hours of work, bearing in mind several factors, including light nature of work. I agree with the conclusion of the Adjudicator that at wayside stations like Ramtek and even some other stations where, having regard to the volume of traffic, the work is of an exceptionally light nature, a demand of 12 hours' work may not cause any hardship, but this is on condition that such workers are provided with places of residence within a reasonable distance from their places of duty. In my opinion, a radius of .5 kilometre from place of duty will be a reasonable distance. On a parity of reasoning, a demand of the same number of hours from such EI workers as Gatemen C Class, Saloon Attendants and Care-takers of Rest Houses and Reservoirs etc., will also not cause any hardship. Having regard to the light nature of work which these servants have to perform, I do not propose to make provision for residential accommodation for them a condition precedent, although, in fact, these servants are at present being provided with residential accommodation. In the case of such workers, a demand of 12 hours' duty will not violate those important elements which I have mentioned above. Even after performance of 12 hours duty, such workers will have sufficient time for meeting civic, social and domestic obligations as there is no danger of a point of fatigue being reached in performance of their work. However, the prescription of 12 hours duty in the case of other EI workers is likely to offend against those principles, specially where EI workers have to come for performance of duty from distant places as happens when they are stationed at large towns and cities. If a duty of 12 hours is demanded from them and they have to spend considerable amount of time in coming to and from the places of residence, it is clear that very little time will be left for discharging their domestic, social and civic obligations. Having regard to international thinking and national legislation on the subject, in my opinion, except for the limited class of persons working at roadside stations and for whom quarters are provided, or the types of workers such as Class C Gatemen, 60 hours per

week should be the total number of hours for which they should be called upon to work and, therefore, they should be rostered ordinarily for 10 hours duty per day. In the case of such workers, therefore, the maximum additional hours will be 2 per day and 12 per week. In fixing this ceiling, one has also to bear in mind that a significant number of workers stationed at roadside stations will also be required to attend earlier and/or leave later than the hours fixed for them on the ground that they are required to do so for preparatory and complementary work. Therefore, for the above reasons, I have come to the conclusion that the maximum additional hours for the staff such as Class C Gatemen, Saloon Attendants and Care-takers of Rest Houses and Reservoirs etc., should be 24 per week and the maximum rostered hours per day should be 4. For the same reasons, I have come to the conclusion that the maximum number of additional hours for Essentially Intermittent workers at roadside stations should be also 24 per week and their maximum additional rostered hours per day should be 4, provided such servants are given suitable quarters for residence within a radius of .5 kilometre from their places of duty. If the administration is not able to fulfil the above condition, then, such Essentially Intermittent workers should be governed by the number of additional hours prescribed for the rest. For the same reasons, I also decide that for the rest of the Essentially Intermittent workers, the number of maximum additional hours should be fixed at 12 per week and their maximum additional rostered hours should be 2 per day.

6.130. Before fixing the number of additional hours, I have given my anxious consideration to the difficulties which railway administrations will have to face on account of the reduction in the total number of hours to daily 10 and weekly 60 in the case of those for whom 12 daily hours cannot be prescribed because of the inability of the administration to provide residential quarters for them. I am aware of the fact that since railway is a continuous industry, administrations will find difficulties in framing suitable rosters for the latter class of workers. But, under the present scheme, EI workers work round the clock and rest-givers are required only for giving weekly rest. However, if EI workers are required to work for only 10 hours per day, there will be a gap of 4 hours per day and 24 hours per week for which one more worker may have to be appointed. In my opinion, though an industrial adjudicator may bear in mind such difficulties in fixing the hours of work, it is not proper to increase the number of working hours if otherwise it is not just to do so, solely on the ground of administrative difficulties. Though I have fixed only two additional hours of daily work, the weekly hours of work will be 60. I have already concluded that the system of averaging is justified on railways. Therefore, in the case of EI workers also, the total maximum number of hours for which work can be exacted from them will be 72 in the case of the first-mentioned category of EI workers and 60 in the case of the rest of such workers. Having regard to the fact that, on railways, overtime is not payable on a daily basis but, in the case of EI workers, on a weekly average, it will not be difficult for railway

administrations to tide over administrative difficulties if they arise on account of the above provision. In my opinion, the difficulties are not insuperable. I have in mind the following, among other, measures, which can be devised by railway administrations to tide over the prospective difficulties : (1) it may provide sufficient work to the existing EI employees so as to promote them to Continuous classification by combining duties as suggested by the Adjudicator. In my opinion, railway administration must seriously undertake such an investigation, at least at large and junction stations; (2) it may devise split shift rosters for EI workers wherever such rosters are possible, or (3) it may exact 12 hours' work from such EI workers for five days only and, for the sixth day, an additional rest-giver may be appointed, the result being that, in the case of such EI employment, instead of there being a weekly rest-giver as at present, there will be two rest-givers, each of whom will be able to give rest to three workers.

6.131. For the above reasons, I have come to the conclusion that, in addition to the standard 8 hours per day and 48 hours per week, the EI workers can be called upon to perform duty for additional hours. Such additional hours shall be fixed, firstly, on individual merits in the case of each kind of such employment with reference to the principles mentioned in paragraph 6.127 above. However, such hours of work will be subject to the following ceilings : (1) for certain kinds of EI workers, such as Class C Gatemen, Saloon Attendants and Care-takers of Rest Houses and Reservoirs etc., the maximum additional daily rostered hours will be 4 and weekly 24 ; (2) for EI workers at roadside stations, the maximum additional daily rostered hours will be 4 and weekly 24, provided such workers are given suitable residential quarters within a radius of .5 kilometer from their places of duty; and (3) in the case of all EI workers who do not fall within the categories mentioned in (1) and (2) herein-before, the maximum daily rostered hours will be 2 and maximum weekly hours will be 12. In the case of EI workers falling in the second and the third categories of workers, the total number of hours including the additional hours will be 72 and 60 per week respectively. In addition to this, each of the aforesaid kind of workers will have to render such preparatory and complementary work as may happen to be allotted to them on the principles mentioned in paragraph 6.132 below. Such workers will earn overtime only after they have worked for the total number of hours calculated as above in a week. As regards the first category of EI workers, I propose to discuss their averaging period just in a moment, when I take up the contentions in regard thereto urged by both sides.

Maximum additional hours for preparatory and complementary work for EI workers

6.132. There is one more point in regard to the above type of workers, and it is in regard to the maximum additional hours of work which should be fixed for them for preparatory and complementary work. For determining the question as to when EI workers can be called upon to render preparatory

and complementary work, the principle will be the same which I have enunciated in paragraph 6.57 above. In my opinion, having regard to the considerations mentioned by me therein and taking into consideration the additional hours of work which such workers are called upon to perform as EI workers, the maximum additional hours for such work should be fixed at 3 hours per week in the case of EI workers of the categories (1) and (2) mentioned in paragraph 6.131 and 4½ hours per week in the case of EI workers mentioned in category (3). In the case of categories (1) and (2), the hours have got to be limited to 3 per week, as, otherwise, the statutory limit of 75 hours will be exceeded in their case. The present practice of ignoring such type of work for a period of less than 15 minutes shall continue to apply to EI workers also.

Averaging period and periodic rest for Gatemen 'C' etc.

6.133. That brings me to the question of the treatment to be accorded to the four types of workers who are at present classified as Excluded in the matter of hours of work. As already stated, these servants are Class C Gatemen, Saloon Attendants, Bungalow Peons and Care-takers of Rest Houses and Reservoirs etc. At present, these four categories of workers are classified as Excluded. The Federation demands that they should be classified as Continuous. On the other hand, the Railway Board maintains that the existing classification of Excluded is justified. I have rejected the contentions of both and have held that these four categories of workers are Essentially Intermittent workers. I have indicated that, in determining the hours of work of these workers, the fourth principle enunciated in the Report of the Inland Transport Committee (*ibid.*) that the hours of work may be determined on the merits of actual work done by each of the above four categories may be applied. I have also concluded that the ceiling of 72 hours per week should be applied to three of the above categories without any pre-condition of these servants being provided with residential quarters. During the course of arguments, at my suggestion, Mr. Mahadevan, with the consent of the Railway Board, submitted for my consideration rules for the hours of work, rest period, etc., in regard to the above four categories of servants. I made the suggestion to elicit from the Railway Board if any reasonable rules can be framed on the above topics in regard to the above four categories which would, whilst meeting the needs of classification, not create unnecessary difficulties for railway administrations. I have given my anxious consideration to the suggestions made by the Railway Board. However, I cannot persuade myself to accept any of the suggestions of the Board in regard to the working conditions of the above four categories. In the first instance, all the suggested rules are based upon the assumption that all the four categories belong to the Excluded classification. Secondly, the reliefs which the Railway Board intends to give to the above categories of servants are not such as to remove the taints which attach to their working conditions. For the reasons which I have already given, all these

categories of servants evidently fall within EI classification and should be considered as such. The only point on which there can be some difference of opinion can be in regard to the number of additional hours for such categories. So far as bungalow peons residing at or close to their places of work are concerned, I do not see why such peons should be treated on a different footing from the peons working in the office or even peons working at bungalows without accommodation near such bungalows simply because they happen to be residing within a short distance from the bungalows of their officers. If the officers whose peons do not reside near their bungalows can do without services of such peons, there is no reason why the officers whose peons stay within a short distance should have that facility and why peons who reside within a short distance should be denied the benefits of HER or should be called upon to work for a greater number of hours than their colleagues. The former arrangement proves that really it is not necessary for official business that a peon should be available to an officer for 24 hours. As regards Class C Gatemen, from their hours of work collected in Table XI at page 69 of the Report of the Inland Transport Committee, 1961, I notice that, except Pakistan and United Kingdom, there is no other country in which such gatemen are called upon to work for more than 12 hours per day. I do not think it is proper to regard Pakistan as an example to follow in this respect as, most probably, the hours of duty of such gatemen obtaining therein follow traditions inherited by Pakistan from undivided India. In UK, gatemen are divided into categories A and B and their hours of work vary according to their categories. I notice that category B gateman's hours of work range from over 8 to over 14 and those of category A range from upto 16 to over 20 per day. However, no information is available as to the basis on which gatemen in U.K. are divided into the above categories. It is found from the remarks made in the above Report at page 68 that, in some countries where only a few trains pass every day and where level crossing-keeper has a considerable amount of time, he is at liberty to attend to his private business. On page 69, it is stated that, where there is a moderate volume of traffic, a system of two 12-hour shifts may be applied. In the same paragraph, it is further stated that the hours of duty of such workers "vary slightly in certain countries according to whether they are provided with housing or not." In my opinion, having regard to the necessity of providing all workers, whichever classification they may belong to, reasonable periods during which they can attend to their social, domestic and civic obligations and the necessity of providing them with leisure outside their places of duty and for cultural, religious and similar other needs, it is necessary that a ceiling of weekly 72 hours should be put in the case of even the gatemen although, for reasons beyond their control, railway administrations may not be able to provide them with sufficient work. As regards care-takers of rest houses and reservoirs etc. also, I do not see how they can be treated differently from Class C gatemen. As regards saloon attendants, it is true that administrative difficulties may arise but, in my opinion, that cannot be regarded as an over-riding factor. However,

in order to mollify such and similar other difficulties, I decide that the averaging period for the above three categories of servants, namely, Class C gatemen, saloon attendants and care-takers of rest houses and reservoirs etc., should be two weeks and not one as in the case of other EI employees. However, they should be given weekly periodic rest.

6.134. It is obvious that railway administrations will require some time for making adjustments consequent upon my decisions on the change of classification in regard to Class C Gatemen, Saloon Attendants, Care-takers of Rest Houses and Reservoirs etc. and Bungalow Peons, and the change in the total number of working hours of the Essentially Intermittent workers. In my opinion, a period of two years will be a reasonable period. Therefore, I decide that the above changes should be made effective latest within two years from the date of this Report.

Intensive classification

6.135. That brings me to the case of those workers for whom Intensive classification is demanded. Before discussing their case, it is necessary to consider some general submissions which were made by Mr. Kulkarni in regard to the definition of Intensive classification. An Intensive employment is defined in clause (d) of section 71-A of the Act. The definition requires a declaration by the prescribed authority that the employment is Intensive on the grounds (1) that the employment is of a strenuous nature, and (2) that there is little or no period of relaxation in such employment. An employment is said to be of a strenuous nature when it involves "continued concentration or hard manual labour." It will be noticed that the grounds on which the classification is required to be made are not quite exact or precise. They are open to the criticism that they are vague, at least in regard to a part thereof. This criticism is legitimate in regard to the expressions "strenuous nature", "continued concentration" and "little or no period of relaxation." It is legitimate to contend that little period of relaxation is the same as no period of relaxation and that the idea is that the nature of employment must be such that there is no period of relaxation whatsoever in the performance of work. Subsidiary Instruction No. (3), which deals with Intensive employment, mentions the grounds in a slightly different but more specific language. It mentions sustained and strenuous attention as one of the grounds on which an employment can be classified as Intensive. It will be noticed that, Subsidiary Instruction No. (3) mentions "sustained and strenuous attention" in place of "continued concentration" mentioned in the statutory definition. The Subsidiary Instruction mentions the ingredient of relaxation in a language which is not vague. It says that sustained and strenuous attention or physical exertion involved when the work is performed must be such that (a) periods of rest, inaction or relaxation do not aggregate 6 hours or more in a cycle of 24 hours, or (b) in any shift of 8 hours, the railway servant does not get periods of inaction, rest or relaxation of at least one hour in the aggregate.

6.136. Now, Mr. Kulkarni's first contention is that Subsidiary Instruction No. (3) is not consistent with the statutory definition and that it is disadvantageous to railway workers. The ingredient of hard manual labour is described as physical exertion in Subsidiary Instruction No. (3) and "continued concentration" is mentioned as "sustained and strenuous attention." The expression "strenuous attention" does not extend the scope of the definition because the definition says that the employment must be of a strenuous nature. "Continued concentration" is certainly more restricted than "sustained attention." Moreover, there is no doubt that, whereas the statutory definition speaks of relaxation only, Subsidiary Instruction No. (3) speaks of rest and inaction, both of which are certainly different from relaxation and need not necessarily be so in every case. A period of rest or inaction is not necessarily a period of relaxation. Relaxation is something more than rest or inaction. A person may be at rest or may be inactive whilst employed in a job and yet may not have any relaxation whatsoever. However, Subsidiary Instruction No. (3) equates rest and inaction with relaxation. Secondly, the Subsidiary Instruction No.(3) introduces a rule of thumb by providing that, if in a cycle of 24 hours, the periods of rest, inaction or relaxation do not aggregate 6 hours or if such periods do not aggregate at least one hour in a shift of 8 hours, it should be regarded as an employment with little or no period of relaxation, It will be noticed that the above two kinds of periods are alternative conditions. Whereas, according to the statutory definition, the whole nature of an employment has got to be considered, according to the Subsidiary Instruction No. (3), the employment in a particular shift may also be considered and if the total period of relaxation, rest or inaction does not exceed one hour in a shift, the employment in the relevant shift may be classified as Intensive. Under the circumstances, I have come to the conclusion that the criticism directed by Mr. Kulkarni against Subsidiary Instruction No. (3) is not justified. Therefore, I cannot agree with him that the Subsidiary Instruction No. (3) is disadvantageous to workers. In my opinion, it has the merit of making the statutory definition more precise, more definite and extends the benefit of the higher classification even if rest or inaction does not amount to relaxation. Moreover, whereas the statutory definition can be satisfied only if the whole nature of an employment is reckoned, according to the Instruction No. (3), the employment in a shift may be classified as Intensive if the period of inaction, rest or relaxation does not exceed one hour in the aggregate. No exception can also be taken to the number of hours' relaxation, rest or inaction given in the Subsidiary Instruction No. (3). Whereas the statutory definition requires no relaxation and even if "little" is construed as "a little" concentration, certainly absence of such relaxation for 6 hours in a cycle of 24 hours or of 1 hour in a cycle of 8 hours must be regarded to be a very reasonable provision, more in favour of workers than permissible on a true construction of the Statute. Under the circumstances, I cannot agree with the submission of Mr. Kulkarni that Subsidiary Instruction No. (3) should be radically revised or altered. In my opinion, Subsidiary Instruction No. (3) is more in favour of railway workers

than the statutory definition.

6.137. Mr. Kulkarni objects to the adjective "strenuous" in the expression "strenuous attention" used in Subsidiary Instruction No. (3). He contends that this restricts the scope of the statutory definition. This submission is made on two counts : (1) that the expressions "attention" and "concentration" are one and the same and are interchangeable, and (2) that the adjective "strenuous" is not to be found before the expression "concentration" in the statutory definition. I do not agree with these submissions. There is a real distinction between "attention" and "concentration". The two words do not mean the same nor are they interchangeable. It is true that "concentration" involves "attention" but it is not mere attention only. "Attention" becomes "concentration" when it is exclusive in the sense that no other thought or idea is allowed to enter the mind to the exclusion of that on which attention is being devoted. Therefore, in my opinion, it is not correct to say that a worker is in concentration when he is simply attentive to a particular matter. This idea is further emphasized by the adjective "continued" before "concentration." The expression "continued concentration" is used in the definition to emphasize the strenuous nature of the work. Therefore, Subsidiary Instruction No. (3) will not be consistent with the statutory definition if it were to use the expression "attention" alone without the use of the word "strenuous". The essence of the definition lies in the strain involved in the concerned job. Therefore, in my opinion, no exception can be taken to the use of the adjective "strenuous" before "attention". It is intended to convey that attention must be of such a nature as to cause strain to worker. It follows that the further argument of Mr. Kulkarni that when a railway worker is in sustained attention, he is performing strenuous work also, cannot be accepted. There is a distinction between "sustained attention" and "continued concentration." Even though attention may be sustained, it may not be continued concentration in the sense that attention is not to the exclusion of any other idea or thought. Under the circumstances, in my opinion, the submission of Mr. Mahadevan is correct that, unless and until sustained attention is such as to cause strain, it does not satisfy one of the essential ingredients of the definition of Intensive classification.

6.138. The substance of the above statutory definition and Subsidiary Instruction No. (3) appears to lie in the strenuous nature of the employment. The strain may arise because of either physical exertion in the performance of work or attention or concentration to be devoted in such performance. Therefore, I agree with Mr. Kulkarni's contention that what the prescribed authority has got to consider on the basis of the materials before him is whether the nature of the employment is of such a character that it involves a strain on a worker. If it so involves and if there is little or no period of relaxation of the kind mentioned in Subsidiary Instruction No. (3), then the employment must be classified as Intensive. Thus, in order to answer the question whether a particular employment is or is not Intensive, all

the facts and data in regard thereto have to be considered with a view to discovering whether the above ingredients, specially those laid down in Subsidiary Instruction No. (3) are or are not satisfied. Therefore, in each case, it will be a question of fact—which the prescribed authority will have to determine—whether the employment concerned is Intensive or not. In my opinion, the question is not merely a question of law, nor can the matter be decided on *a priori* considerations. Each case will have to be decided on its own merits, bearing in mind the above statutory definition and Subsidiary Instruction No. (3).

6.139. The main part of Subsidiary Instruction No. (3) is intended to explain the first part of the statutory definition. The subsequent part consisting of clauses (a) and (b) is intended to amplify the ingredient relating to little or no relaxation. The important point to notice is that it is not the strenuous nature of the work alone which determines the intensive character of an employment. In addition to the strain involved in a job, it is necessary that, during the course of the performance of such job, there should be little or no relaxation.

6.140. From the above discussion, it follows that responsibility involved in the performance of a job does not determine the intensive character thereof. It is true that responsibility involved in a job may involve strain in the performance thereof, but, in order to classify an employment as Intensive, the prescribed authority must be able to draw the inference or conclusion from the responsibility of the job to the effect that the performance thereof involves strain upon the worker. It is necessary to bear this point in mind in view of the fact that Mr. Kulkarni, in the course of his arguments, laid great stress upon the fact that some of the employments which he claims should be classified as Intensive are highly responsible jobs, any deviation in the performance of the duties in which will involve great loss to public or administration.

6.141. The evidence in regard to matters considered while deciding whether a job should be classified as Intensive or not discloses that a minute-to-minute activity of the worker is recorded and, as is done in the job analysis for the EI classification, the periods of inaction of less than 5 minutes are not ignored. Mr. Kulkarni makes a grievance in regard to this practice. I do not think that the grievance is justified. In the first instance, having regard to the statutory definition that there should be little or no period of relaxation, the above information is essential. It is essential even for determining whether Subsidiary Instruction No. (3) is satisfied or not. The above information is equally important because it is the aggregate of the periods of inaction, rest or relaxation less than 6 hours in a cycle of 24 hours or 1 hour in a shift of 8 hours that earns the qualification for Intensive classification. The evidence further discloses that, on Northern Railway, the forms used in a job analysis for Intensive classification contain three columns which the job analyser fills up in the course of analysis. In the first column, the analyser records periods of strenuous work,

in the second column periods of light work and in the third column, periods of inaction, rest or relaxation. The relevant rule is that Intensive classification is to be recommended only if the total period of strenuous work in the first column aggregates to more than 18 hours. It follows from this fact that period of light work is not considered relevant for the above purpose. Mr. Kulkarni's contention is that this is tantamount to equating light work with inaction, rest or relaxation. He submits that this is unfair as light work is certainly of higher quality than inaction, rest or relaxation. I do not think that the above criticism is justified. Having regard to the statutory definition, the two important things are strenuous nature of work and total or almost complete absence of relaxation. Therefore, the first column helps the analyser to determine strenuous nature of the concerned job. Having regard to the fact that the nature of work as a whole has got to be determined, I do not think any exception can be taken if more than 18 hours' strenuous work in a cycle of 24 hours is regarded as proving strenuous nature of work. If at all, such a procedure errs more in favour of the employee than the employer. The third column has reference to the last ingredient in the definition. If that column reveals total or almost complete absence of relaxation, then, the job is classified as Intensive. But, having regard to Subsidiary Instruction No. (3), even if there are periods of inaction or rest, they must be considered too and if the total period of inaction, rest or relaxation is less than 6 hours in a cycle of 24 hours or 1 hour in a shift of 8, even then, the job is classified as Intensive. In considering this question, period of light work is not of any importance. Under the present practice, the period recorded in the second column is not tacked on to the period recorded in the third column and, so long as this practice stands, I do not think that there can be any grievance because, in any case, the result of the job analysis will be in accordance with the ingredients laid down in Subsidiary Instruction No. (3).

6.142. Mr. Kulkarni's next contention is that the moment a job is found to be strenuous on the strength of the record made in the first column, it should be classified as Intensive irrespective of periods recorded in the third column. I cannot agree with this submission. Having regard to the statutory definition, this will be wrong because total or almost complete absence of relaxation is a necessary ingredient. As already pointed out, periods of inaction, rest or relaxation mentioned in Subsidiary Instruction No. (3) are more by way of a concession to the employee than to the employer. Therefore, it is wrong not to inquire as to whether the total periods of inaction, rest or relaxation do or do not aggregate to the figures mentioned in Subsidiary Instruction No. (3). For the same reason also, I am not in agreement with Mr. Kulkarni's contention that clauses (a) and (b) in Subsidiary Instruction No. (3) which mention the total aggregation to which period of inaction rest or relaxation should come upto, should be deleted.

6.143. Mr. Kulkarni further contends that, in any case, Subsidiary Instruction No. (3) deserves

to be amended as there is an inconsistency in-built in clauses (a) and (b) thereof. He says that clause (a) is founded on the formula that an absence of inaction, rest or relaxation of 15 minutes in one hour qualifies an employment for Intensive classification whilst, in clause (b), the formula adopted is that of $7\frac{1}{2}$ minutes per hour. I cannot accede to this argument also. As already stated, clauses (a) and (b) are an amplification of the ingredient of total or almost complete absence of inaction, rest or relaxation. In determining this question, I do not think it is proper to consider the matter on the basis of a mathematical formula. The question has to be determined whether, in a particular space of time, the absence of inaction, rest or relaxation is of such a nature as to afford no respite to the worker—in other words, whether the job is of such a character that it demands continued concentration without any reasonable period of relaxation.

6.144. The evidence shows that the present practice is that if clause (a) of Subsidiary Instruction No. (3), is satisfied, then, the whole employment is classified as Intensive but that, if clause (b) alone is satisfied, then, the employment in the relevant shift only is classified as Intensive. Mr. Kulkarni contends that this is wrong. According to him, even if the employment in one shift is classified as Intensive, then, the whole of the employment must be considered to be Intensive too. I do not think that this submission is justified. The acceptance of Mr. Kulkarni's contention will mean that, although the work in the other two shifts is Continuous in character, it should be classified as Intensive because one of the shifts in the cycle of 24 hours happens to be Intensive. In my opinion, such a construction of Subsidiary Instruction No. (3) will be self-stultifying. Mr. Kulkarni tries to support the above argument on some practical grounds. He concedes that, if there is a single shift, then there will be no problem. But, he contends that, if there are two shifts of 8 hours and one of them is Intensive and the other not, then, in that case, the Intensive worker will have to work for 2 hours' overtime everyday or that, if they alternate, then a worker will be Intensive in one shift and Continuous in another. He further contends that, if there are three shifts and only one of them is classified as Intensive or if there are two Intensive shifts and one Continuous, then, the Intensive worker in each shift will have also to work overtime permanently and that this would offend the rule that overtime work should not be a permanent feature. In my opinion, the submissions of Mr. Kulkarni are based on certain assumptions which are not justified. The assumptions are (1) that the hours of Intensive shift will not be 6 but 8, (2) that Intensive workers will not rotate with Continuous workers, and (3) that even if work has got to be carried on for 24 hours, administration cannot make adjustments in some way so as to avoid permanent overtime work being taken in shifts or that the excess of time in the Intensive shift cannot be passed on the Continuous shift or shifts. In any case, in my opinion, even if there are any practical difficulties in some cases, that cannot be regarded as a good ground for construing clause (b) of Subsidiary Instruction No. (3) in any way not justified by its language. Even if

one assumes that overtime may become a permanent feature in some cases, one should not make a fetish that permanent overtime should, in all cases and at all costs, be avoided.

6.145. Then Mr. Kulkarni contends that if an employment is strenuous for 24 hours with no period of relaxation whatsoever, then, even work for 6 hours will affect health of worker and, having regard to the principle underlying Subsidiary Instruction No. (3) that a worker who does strenuous work for $4\frac{1}{2}$ hours in cases falling in clauses (a) or 5 hours in cases falling in clause (b) is an Intensive worker, a worker working continuously under strain for 6 hours is bound to suffer in health and efficiency. He submits that, in any case, the situation between the two sets of workers is invidious and discriminatory inasmuch as one worker works for $4\frac{1}{2}$ or 5 hours under strain and the other under a strain of 6 hours. I do not think that this argument is valid. In my opinion, it is not proper to compare the two above types of cases in the above manner. The present definition of Intensive employment is based on the premises that a strenuous work of 6 hours can reasonably be put in by a worker without detriment to his health and efficiency. There are no materials on record to show that these premises are not justified. Merely because, in Subsidiary Instruction No. (3) a further concession is made by which strenuous work for less than 6 hours is also made to earn Intensive classification, it is improper to reduce, on that ground, the number of hours of an Intensive worker who works strenuously for 6 hours—a number presumed to be within permissible limits of strain.

Some important groups of Intensive workers

6.146. In paragraph 203 at page 65 of his Report, the Adjudicator mentions five groups of employments which, according to him, satisfy the first ingredient of the definition of Intensive employment. Therefore, he recommends that those employments should be job-analysed with a view to determining if the second ingredient of the above definition is or is not satisfied, namely, whether there are little or no periods of relaxation in such employments. These five groups of employments are—

- (1) Section Controllers;
- (2) Staff employed in line clear work ;
- (3) Yard staff such as yard foremen, gunners, shunting or coupling jamadars or shunting or coupling porters ;
- (4) Signallers whom it may be necessary to employ continuously on heavy circuits ;
- (5) Wireless operators.

As regards Telephone Operators, the Adjudicator observes that theirs is a border-line case. There is considerable body of evidence on record to show that, in spite of the above observation, job analysis in regard to the above five groups of employments

has not been undertaken except in a very few cases. The evidence discloses that, on the contrary, some of the above employments at particular places were job-analysed with a view to downgrading them. I feel extremely unhappy that the above observations of the Adjudicator have not been carried out and that, although 20 years have elapsed, no adequate steps have been taken with a view to determining whether the above five groups of employments are or are not really Intensive in character. These five groups of employments and some more are now sought in this Reference to be classified as Intensive. I now proceed to consider this case of the Federation.

Wireless Operators

6.147. The first group of employments is that of Wireless Operators. These operators work at wireless stations. The evidence discloses that there are three kinds of such stations, namely, (1) a controlling station, (2) a monitoring station, and (3) an operating station. A controlling station controls an operating station and it is in charge of more than one such stations. It allots time and work to such stations. A controlling station has both a receiving and a transmitting set. A monitoring station does more or less police work. It exercises checks over several operating stations. It checks up whether the stations concerned operate on correct frequencies, adopt proper procedures in transmitting and receiving messages, if they violate any rule in regard thereto and if they exchange unnecessary or superfluous messages. It also exercises a check as regards texts of messages. Such a station has only a receiving set. An operating station transmits, receives or watches messages from another station. It is always engaged in one of these kinds of operations. An operating station may be either in a link or a net-work. If it is in a link, then, it involves two operating stations only. If it is in a net-work, then, it involves more than two such stations. Whether a station is in a link or a net-work, it is always on the air and is monitored by the monitoring station and controlled by the controlling station. In a link, one of the two stations either transmits or receives a message. In a net-work, one station transmits a message and one or more receive it and if a station is neither transmitting nor receiving a message, it watches the exchange of messages between the other stations in the net-work. All these stations are governed by the Wireless Instructions published in Volumes I and II of General Rules and Departmental Instructions for Radio Stations in India (Short title: Indian Wireless Instructions) published by the Indian P. & T. Department, and also by the Rules of the P. & T. Department published in the Post & Telegraphs Manual, Vol. XI. Each link or net-work is allotted a frequency, different frequencies being allotted for night and day. A frequency once allotted is not changed ordinarily, but, if it happens to be changed, then, at any given time, the same frequency will be used for each link or net-work. The evidence discloses that the operational stations are either (1) wireless telegraph stations, or (2) radio telephone stations, or (3) radio telephone operational stations. Messages at wireless telegraph stations are transmitted and received in Morse Code

signals and texts of messages at other stations are transmitted in the language of the text.

6.148. In order to decide whether the employment of a wireless operator is Intensive or otherwise, it is necessary to assess the operator's job with a view to determining whether the performance of his job involves continued concentration or sustained and strenuous attention. Secondly, it is necessary to assess whether there is little or no period of relaxation in the employment or whether the total periods of inaction, rest or relaxation do not aggregate 6 hours in a cycle of 24 or 1 in a cycle of 8 hours. Therefore, it is necessary to assess the work of each of the above kinds of operators separately. Evidence has been given in regard to the work of job analysis done at the wireless stations at Northern Railway and Western Railway Headquarters. At Northern Railway Headquarters, only one channel was job-analysed in 1962 and, as a result, two stations thereon were held to be Intensive and one station to be Continuous. Between 1961 and 1965, out of 8 links working at Northern Railway Headquarters, only 4 links were job-analysed, the stations omitted from the job analysis being those wherein channels were working for less than 24 hours. At Western Railway Headquarters, no job analysis has been done at any time except in regard to Bombay Central Station, the job analysis in regard to which was done in 1948. It was classified as Intensive and, when so classified, it was working round the clock. On Western Railway, two more links and a few stations have also been classified as Intensive but this was so done without any job analysis having been undertaken. They have been so classified on the ground that, like Bombay Central Station, these links or stations were also working round the clock. The evidence discloses that, on Central Railway, operators working on high-power stations are classified as Intensive and those working on low-power stations are classified as Continuous.

6.149. In my opinion, the omission to job-analyse stations on Northern Railway on the ground that the channels were working for less than 24 hours and adoption of Intensive classification on Western Railway on the ground that the links or stations were working round the clock, are both unjustified. The criterion adopted on Central Railway is not also correct. A job analysis should have been undertaken in regard to all these stations with a view to determining whether the above two ingredients of Intensive classification were or were not satisfied in regard to all the channels working on the above railways.

6.150. A wireless station is divided into a number of channels, each catering to one or more stations. The work done at all these channels is supervised by an Inspector who, sometimes, assists the supervised operators. Each channel is operated by an operator, one of them being the controller.

6.151. All operators are required to put on a headgear which they cannot remove except for some valid reason. According to Vishwanathan, some operators do remove their headgears whilst their

stations are not on the air but for a short while only, specially because continuous wearing of head-gear is uncomfortable. The evidence is that, at some stations where loud-speakers are installed, operators may remove headgears and listen to messages on loud-speakers. However, loud-speakers can be used only when they do not cause interference with the work done at other channels. Once a wireless operator has joined duty, the service rule is that he cannot leave his place of duty except for such emergent cases as answering a call of nature for which only ten minutes are allowed and that too, the evidence shows, only once in a shift. In cases of power failure, operators are required to use batteries or power generators. Every wireless operator is required to maintain and fill up a log book. The rule on the subject is that entries in the log book should be made within five minutes from the time when a message is received or any interference takes place on the channel. These log books are of great importance inasmuch as they furnish the best evidence in case any dispute arises as to what took place on a channel at any particular point of time.

6.152. A controlling operator assigns timings for transmitting messages to links or net-works controlled by his station. He also determines the priorities of different messages received at the stations controlled by him. The main duty of such an operator is to ensure that the controlled stations are fully utilised without any loss of time. Having regard to these duties, I am not satisfied that the jobs of all controlling operators necessarily involve continued concentration or sustained and strenuous attention. Whether it will be so or not should depend upon the result of an actual job analysis. Under the circumstances, I am not satisfied that all controlling operators should be classified as Intensive workers. However, I may clarify that this conclusion applies only to a purely controlling operator. There is reason to believe that the present practice is to assign controlling duties to one of the operating stations and such a station makes arrangements for controlling other stations. It is not quite clear as to whether the controlling duties are assigned to only one operator at such a station or is distributed amongst the various other operators, i.e. whether the controlling work done by an operator is exclusive work or is an additional work which he does in addition to the work of transmission, reception and observation of messages. It is obvious that, if latter is the case, then, the controlling operator will have the benefit of the presumption mentioned in paragraph 6.158 below. If such is not the case and controlling work is exclusively done, then, the operator may be governed by the conclusion recorded in the present paragraph. However, if the work of transmission, reception and observation of messages is done only partially along with controlling work, then, the classification of such an operator may depend upon periods allotted to him for controlling work and cannot be determined unless and until his work is job-analysed. Such a controlling operator will not have the benefit of the presumption laid down in paragraph 6.158 below.

6.153. As already mentioned, a monitoring operator does (1) frequency monitoring, (2) text monitoring,

and (3) procedure monitoring. His duty is to see that the monitored stations do not transmit on a frequency beyond permissible limits; that no unauthorised messages are transmitted or unauthorised conversations take place on the channel; to see that the monitored operators do not come late or go away early and that they follow proper procedures in transmitting messages. Like all other operators, a monitoring operator has also to maintain and fill up a log book. but his log book does not contain a record of any part of the text of a message. It contains only such details as deviations from frequencies, quality of their emissions and all other unusual happenings which may take place during the course of transmission. It further records the space of time taken between two entries so as to control that the interval between two messages does not exceed five minutes. A monitoring operator can monitor only one link or net-work at one and the same time. Choice of the link or net-work to be monitored is left to his discretion, the only guideline on the subject being that he should at least monitor one link or net-work whilst attempting to cover as wide a spectrum as he can during his shift. A monitoring operator has no transmission key and, therefore, he cannot establish any communication between himself and the monitored operators. If he receives a complaint of harmful interference from any monitored station or if he himself notices one or notices any deviation from the frequency beyond permissible limit, it is his duty to record the above events in his log book and, if any of the above matters requires any immediate rectification, his duty is to bring it to the notice of the Inspector which he does by using a telephone or by sending a telegraph message. If there is any interference by a non-railway wireless station or even by another railway wireless station, then, probably, he is required to take down the message in full. He has to do the same thing if any jamming is noticed by him. A monitoring operator supervises about two or three frequencies on each day. Like all other operators, he has to put on the headgear from the commencement of the duty till the end, he being prohibited from taking it off except for valid reasons. Having regard to the above features of a monitor's duties, though such duties are responsible and the log book which he maintains is regarded as *prima facie* reliable evidence of the events recorded therein, it is not possible to postulate that he is required to give continued concentration or that his work is necessarily strenuous continuously and/or in each and every respect. In my opinion, whether it is or is not so can be ascertained only by a job analysis and, having regard to the fact that he has sufficient latitude in selecting the links or net-works to be monitored, it cannot be said that his work is necessarily of a strenuous nature or that he cannot have reasonably brief periods of relaxation. In any case, I am not satisfied that the job of a monitoring operator is necessarily of such a character that a presumption must necessarily be made that it is of an Intensive character. Whether it is so or not should depend upon the actual job analysis. Therefore, I decide that the Federation has failed to make good its case that a monitoring operator must be classified as Intensive.

6.154. The work of an operator other than a controlling or a monitoring operator differs according as he is engaged in the work of transmission, reception or observation. However, all these operators have to be on the alert for call signs. Messages are transmitted either by the method known as "call-up" method or "without call up" method. After a wireless operator has assumed charge, he is required to verify whether his set is working properly or not, that is, whether he is able to pick up his call sign, whether the notes on his set are readable and whether he can establish contact with the other stations in his link or net-work. If a message is in progress, he takes charge of the same and proceeds further with it. He arranges uncleared messages according to their priorities and reshuffles them as and when fresh messages arrive. As already stated, a wireless operator either transmits or receives or observes a message. The evidence discloses that, after assumption of charge, a wireless operator will do not any of these three operations. When he transmits a message, he adopts either the "call-up" method or "without call-up" method. Under the first method, he calls twice the sign of the station to be called, says "DE" and gives his own call sign. Then he gives the details as to how the message is to be received, that is, on the pro forma or ordinary message form and with or without carbon copies. After the called station uses "K", he begins transmission of message. If the called station has its own message to deliver, it may not accept the call on the ground that it has a message of higher priority in which case he will defer transmission of his message. If he uses the second method, then, he speaks the call sign of the called station only once, then, speaks his own call sign and, at once, begins to give particulars already mentioned, without waiting for any reply from the called station. Then he begins the actual transmission. In doing so, he places the message in front of him, reads it and, as he reads the text, he transmits each word on his set. If the station works on Morse Code, then, he converts each word into a code equivalent on the Morse signal. As each word or signal is transmitted, he listens to a side tone in the air with a view to being assured whether the word or the code signal has gone correctly on the air. At the end of the message, a receiving operator either acknowledges that the message has been correctly received or asks for repetition of the whole or a part thereof if the same has not been correctly received. The receiving operator hears the word or the coded signal and, as he hears the same, he writes down the word or converts each signal into the correct letter. The watching or the observing operator also has to hear the coded message but he is not required to take down the text of the whole message in his log book. He has to take down compulsorily the preamble and the concluding portion of the message. However, the evidence discloses that, though he has not to take down the whole text of a message, he has to be attentive to the communication going on between the transmitting and the receiving operators. He has to do this for more than one reason. A message may terminate before the scheduled time. The instructions are that, in such a case, the next item on the schedule must start immediately even though the scheduled time

may not have arrived. A message being delivered to the receiving operator may not be quite readable to him at the receiving end. However, if it is readable at the watching end, the watching operator is required to help the receiving operator, so as to enable him to take down the next correctly. Moreover, the relevant rule says that, at a given interval, even portions of the next of the message should be recorded in the log book. He has also to record in the log book any unusual happening in the transmission of the message so that the same may be useful in case a dispute arises between transmitting and receiving operators.

6.155. Having regard to the above evidence, I am satisfied that the job performed by the above operators, whether they are transmitting, receiving or watching a message, demands continued concentration and their employment as such is strenuous within the meaning of the definition of Intensive employment. That this is so in the case of operators engaged in transmitting and receiving messages, there is not much dispute. While transmitting a message, an operator has to read and transmit it simultaneously. It may be taken for granted that, like a typist, an experienced operator may be able to undergo these two operations without much difficulty, but, at the same time, it cannot be denied that, unless the operator concentrates on the job, he will not be able to execute the same with efficiency. The job of a receiving operator demands even more concentration. He has not only to concentrate his attention in picking up the notes correctly, but, simultaneously, he has got to transcribe the text of the message in his message book. Whereas the texts of messages are in front of the transmitting operator, the texts are mysteries to the receiving operator and, therefore, the correctness or otherwise of his transcription depends entirely upon his effort in catching the note correctly and transcribing it into the message book. Whilst this is so in the case of the above two operators, there can be some difference of opinion as regards the job of a watching operator. In one sense, his position is the same as that of a receiving operator, but this is so only as regards the preamble and the concluding portions of a message. As regards the text of a message, though he is required to listen to the message, he does not engage himself in transcribing it in the message book. But, all the same, if the job is to be performed efficiently and, according to rules, the watching operator has to concentrate his attention on what is going on between the transmitting and the receiving operators : he has to be attentive not only because he is required, at certain intervals, to transcribe a part of the text of a message, but, he is also required to note unusual happenings and, in case any difficulty is found at the receiving end, to help the receiving operator. He is also required to be attentive so that, in case the current transmission suddenly ends, he may, without loss of time, be ready to transmit, receive or watch another message fixed on the schedule. The evidence of the Federation is unanimous that the work of all the three above operators is strenuous in nature. Even the Board's witness Vishwanathan has fairly conceded that the work of all the three operators is strenuous. However, according to him, the job of the receiving operator is more

strenuous than that of the transmitting operator and that of the watching operator is still less strenuous. Having regard to the above factors which I have mentioned, this distinction between the jobs of the three operators appears to be justified, but, what is important to notice is that though, *inter se*, one job may be more strenuous than the other, all the three jobs are strenuous in nature. This is because, so long as the set is on the air, operations therein demand continued concentration. Whilst this is so generally, the strain on the operator is bound to be more when the set operates on Morse Code. In that case, the signals have to be coded by the transmitting end simultaneously with the reading of the text and decoded at the receiving and watching ends simultaneously with the hearing thereof. The receiving operator has not merely to decode the text of the message, but, has to transcribe the whole of the text from the beginning to the end, whereas the watching operator is required to do this in regard to the preamble and the concluding portion and parts of the text at stated intervals. Whilst performing all these operations, an operator is also required to be alert for picking up his own note in case an interruption in transmission of a message is noticed by him; to make an extra effort to listen in cases of jamming, atmospheric or local disturbances; he has also to strain his nerves if the signal strength is not of the proper order or the readability of the notes is not satisfactory. It is true that he can ask for repetition of a message, but, the rule on the subject is that he can do so only thrice and no more. There is also evidence in the case to show that, when figures are transmitted in Morse Code, the transmission requires greater effort than when letters are transmitted. An important part of the job of a wireless operator is to transmit line and stock reports from all major and important stations and yards to Divisional Headquarters and similar messages from Divisional Headquarters to the Railway Board. The evidence is that, when such reports contain figures and, if these figures are not transmitted in letters but in Roman numbers, greater effort is necessary which adds to the strain on the nerves of the operator. It is true that, in determining whether there is strain involved in a job or not, the matter is not to be considered from the point of view of a novice or an inexperienced person. Such a person will find even an easy or an ordinary job strenuous. In considering this question, the matter is not to be viewed from the point of view of a layman also. The matter has got to be considered from the point of view of a worker who is reasonably efficient in the performance of his job. The question in each case will be whether, in performing the job, there can be strain on a person endowed with reasonable experience and equipment. Even viewing the matter in that manner, having regard to all the above factors, I have no doubt that, so far as all the above three operations are concerned, there is strain on the worker inasmuch as he is required to give continued concentration in the performance of his job. The evidence discloses that, at least, in regard to wireless stations on railways of which the witnesses had knowledge, the quantum of work at all these stations is such that the operators are more or less continuously employed. There is no doubt that, on an ordinary day, a wireless operator is required to begin work as soon as he assumes charge.

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Even the preliminaries which he has got to undergo, such as arranging uncleared messages according to their priorities, has got to be done by him whilst engaged in the actual technical operation and, whilst such operations are going on, he is required to reshuffle messages according to priorities as and when a fresh message is recorded.

6.156. Naturally, Mr. Mahadevan feels himself constrained and embarrassed by the frank evidence given by Vishwanathan on the question of strain involved in the jobs of transmitting, receiving and observing wireless operators. Perhaps, because of some such constraint, Mr. Mahadevan suggests a refinement in the matter of test to be applied in deciding whether there is or there is not strain involved in the job of a wireless operator. He starts with the premises that the work of a section controller is strenuous. He submits that what makes this work strenuous is the involvement of a thought process which has got to be undergone after the collection of data. He further submits that such a phenomenon is totally absent in the work of a wireless operator. According to him, the latter's work involves totally a mechanical process and that no mental effort has got to be made except to code or decode a message which, he contends, is more or less mechanical once mastery is acquired in that art. I am unable to agree with this refinement. In the first instance, such a refinement is inconsistent with the language used in the definition of Intensive classification. The definition specifically includes strain arising out of physical activity. Under the definition, strain arising from continued concentration is also strain which can earn intensive classification and, in my opinion, continued concentration does not necessarily require any thought process of the kind suggested by Mr. Mahadevan. Such a refinement is also not in accordance with the evidence or the practice prevailing in the matter. The evidence discloses that, out of 689 wireless operators, working on different railways, 229 are classified as Intensive. It also shows that whenever the classification of Continuous wireless operators has been reviewed, in a majority of cases, it has been upgraded to Intensive classification. According to Gurlal Singh, a policy decision has been taken on Northern Railway that the work done by the transmitting, receiving and observing wireless operators is strenuous work. This decision has been taken in consultation with the Chief Signal & Telecommunication Engineer—an officer whose opinion is bound to be invested with authority having regard to his special knowledge on the subject.

6.157. It is true that there cannot be any generalisation on the question of total or almost complete absence of relaxation. The evidence reveals that some of the wireless stations or channels therein have been found to be Continuous on a job analysis. I have no doubt that this would be on the ground that the above second ingredient has not been satisfied. The non-satisfaction of the second ingredient will depend upon the quantum of work and not upon its nature in the case of these operators. Therefore, so long as there is operational work to do, there will be no relaxation. Relaxation can occur if there is total inaction arising on account of total absence of work.

6.158. According to Vishwanathan, the quantum of work at wireless stations differs at headquarters and outlying stations, the number of operations and shifts being less at outlying stations. This is certainly a circumstance to be taken into account. However, one is entitled to assume that the strength of the operational staff is fixed on the basis of the quantum of work in such a manner that the time of the operators will not be wasted. Therefore, having regard to these factors, I have no doubt that the recommendation made by the Adjudicator that the job of wireless operators should be analysed with a view to ascertaining whether they are intensive or not is justified. As already noticed, unfortunately, such job analysis has not yet been undertaken in a majority of cases. I have reasonable grounds for holding that because job analysis is not done, though an operator may be intensive, he is being borne on Continuous classification. Even if there are a few such cases, I have no doubt that it should be regarded as unjust. Therefore, I decide as follows: The concerned administrations should take immediate steps for job-analysing the work of and finalising the classification of operators (including operators who do partially controlling work but excluding monitoring operators and operators who do exclusively controlling work) who are at present classified as Continuous, that is, those operators who are engaged in the work of transmitting, receiving and watching messages, within one year from the date of this Report and that, if the administrations fail to do so, then, at the expiration of the period of one year, such operators whose cases have not been so finalised should be presumed to be Intensive workers and their hours of work fixed accordingly. In the latter contingency, it will be open to the administrations thereafter to begin or complete the analysis of such jobs at any time in future and, if any such analysis justifies the finding that the work of any particular operator is Continuous, job of such a worker may be re-classified as Continuous.

Section Controllers

6.159. The Federation claims Intensive classification for Section Controllers also. Such Controllers belong to the Control Organisation of railways. This is a vital organisation. It has been described by Da Costa in his book "Railway Operations" as a link between the line staff and the administration, the eyes and the ears of the administration and the brain centre of all railway operations. The object for the establishment of this organisation is to obtain the best possible train movements within available resources. The evidence discloses that a Section Controller is the key person in this organisation. A Section Controller exercises jurisdiction over an area which may extend to more than 150 kilometres. His main function is to pilot all through goods and passenger trains originating or passing in his jurisdiction safely and speedily to their destinations or to neighbouring sections. He has the same duty to perform in regard to slow moving goods trains in his section. In addition to the above function, in regard to the latter kinds of trains, he is concerned with making arrangements for supplying and releasing empties, attaching and detaching loaded stocks and assuring that loading and unloading takes place at wayside stations.

He decides as to when and how long power and engineering blocks should be permitted in his section; makes arrangements for supply of crew to trains; co-ordinates the work of different stations, yards, offices and staff and attends to requests for line clear and grants them. In order to carry out these duties efficiently, he has to plan in advance train movements and has to be ready to make adjustments in plans if abnormal circumstances develop in his section. In order to enable him to carry out the above functions efficiently and well, it is necessary for him to be fully acquainted with the geography of his section and all engineering and power blocks in it; the personnel working, the circulars and working orders applicable and stock and power positions obtaining in it. He also gathers information on some of the above points and transmits it from one section to another. He takes prompt action for rectification of defects on or in tracks, signals, block instruments and points' signals brought to his notice. He is the sole means of communication between stations not inter-connected, between trains on the run and between officers who have to make staff arrangements. Though he cannot order out a train in his section, he is also concerned with it inasmuch as the decision of the Deputy Controller whose function it is to do so, depends upon the information collected by him on the subject. Moreover, he can take a decision direct if circumstances occur, after Deputy Controller's decision, making it difficult for him to implement the decision of the Deputy Controller for starting a train. Thus, the main responsibility of a Section Controller is to maintain the fluidity of railway traffic consistent with its speed. In planning train movements, he is to be mindful of train crossings and precedences. Because of the above onerous duties, a Section Controller is in absolute control of all trains. All officers, connected with trains, high or low, are bound to respect his decisions in matters of such control. Whilst performing the above main functions, he has also to perform a number of other duties, some of which I have mentioned above, simultaneously with the performance of his main duty. If there is any deviation in traffic in his section, the Section Controller is held responsible for the same. Therefore, special care is devoted in selecting candidates for the posts of Section Controllers. They are usually drawn from Guards and ASMs with sufficient standing and, after selection, they are required to undergo a course of training. They are confirmed only if they pass the course. The evidence discloses that, therefore, a Section Controller must be well-informed, endowed with clear thinking, capable of giving precise and definite instructions and must be sufficiently alert and quick to deal with any situation that may arise at any moment. Swaminathan says that a Section Controller must display a high degree of skill and specialisation. It is in the above background that the claim for Intensive classification of Section Controllers has got to be considered.

6.160. Having regard to the above facts, there is no doubt that the functions a Section Controller performs are highly responsible. Both the fluidity and the safety of train movements mainly depend upon the efficiency with which he performs his duties. However, as already mentioned, though the above

facts have got to be borne in mind in deciding whether an employment is strenuous or not, by themselves, they are not conclusive on the subject. The question for consideration is whether the evidence establishes that the employment requires continued concentration and/or sustained and strenuous attention. In my opinion, the evidence justifies the conclusion that the main functions a Section Controller performs are strenuous and require sustained attention. It is quite obvious that he has always to be on the alert for the incoming and outgoing trains and the trains which are actually running in his section. Though, in regard to passenger and through goods trains, the plans of movements may have been charted out already, he has always to be on the alert to reshuffle the planned schedules in case anything amiss takes place which disturbs the schedules. In regard to slow moving trains, he has got a number of functions to perform which must also require close attention and alertness. In addition to this, he has always to plan in advance and, in doing so, has to see that no conflicting movements take place and train crossings and proper precedences are maintained. In addition to the above kind of strenuous work, he has to attend to a number of other chores which must add to the strain. He has to be in constant touch with the stations within his jurisdiction, attend to requests for line clear, decide whether line clear should or should not be given, and make prompt inquiries if, after grant of line clear, a train does not move. He has also to maintain communication between one station and another if requests to that effect are made to him. In addition to this, he has got to make arrangements for supply of train crew and, where records are not heavy, has to maintain certain registers and fill up forms. In addition to this, he has also to maintain a diary, some portions of which are written during the performance of the above duties. In my opinion, the sum-total of all the efforts which a Section Controller is expected to make is that the work he is engaged in is strenuous. The evidence of Swaminathan is that the work of a Section Controller is strenuous only when the workload has gone beyond a certain intensity and, according to him, the workload of Section Controller varies from section to section. I am not in agreement with this broad generalisation. In my opinion, workload is relevant for determining whether the second ingredient of the definition is or is not satisfied and it is not relevant on the question of the strenuous nature of the work of Section Controller. I have come to the conclusion on the basis of the evidence and other facts mentioned above that, as and when a Section Controller is engaged in the performance of his main functions, there is strain on him. Therefore, in my opinion, the Adjudicator is right in holding that the employment of a Section Controller is strenuous in character. In para 6.156, I have referred to Mr. Mahadevan's submission that the work of a wireless operator is not strenuous. The submission is grounded on the admission that the work of a section controller is strenuous.

6.161. However, the real point which requires to be attended to in the case of a Section Controller is whether he has or has not little or no period of relaxation. Since the Federation claims an Intensive classification for Section Controllers straight-off

by a decision of this Tribunal, it is quite clear that, unless the evidence justifies the conclusion that the employment of each and every Section Controller is such that he can have no period of relaxation or that the periods of inaction, rest and relaxation do not aggregate 6 hours in a tour of 24 hours, the demand of the Federation cannot be acceded to. Now, on this point, as is to be expected, there is conflict of evidence. The witnesses of the Federation maintain that the work is of such a kind that there is no respite whatsoever. On the other hand, Railway Board witnesses maintain that such an absolute proposition is not justified. They say that the absence or presence of relaxation will depend upon the workload, that is, the quantum of work which a Section Controller has to perform, and can be decided only on the basis of the data collected in regard to the work performed by each Section Controller. I have already referred to the evidence given by Swaminathan when discussing the aspect whether the first ingredient of the definition is or is not satisfied. Swaminathan says that he can even imagine Section Controllers' boards where there may be periods of inaction. He has given the instance of Poona-Manmad section in which, according to him, in 1955, there were only 5 or 6 trains moving each way in a section comprising 180 to 200 kilometres, the trains being one express, two passenger and two goods. He denies that there can be no board in which one or the other train does not move at any moment of a day. The example he quotes is that of the above-mentioned Poona-Manmad section. However, I have no doubt whatsoever that the instance given by Swaminathan is an extreme instance. Swaminathan himself admits that the number of such light boards will not be considerable. According to Da Costa, a Control Organisation is installed when traffic reaches a point of saturation or is congested. Therefore one is entitled to presume that increase in the number of locomotives, vehicles, stations, increase in speed and introduction of automatic signalling must have considerably increased train movements. The evidence is that a Section Controller must put on a headgear the moment he assumes duty and that he cannot doff it during his duty hours without a valid reason. According to Swaminathan, he does so for about a minute or two to remove discomfort arising from the wearing of headgear and that he can relax for about five minutes or so for his personal needs. He also says that he can do so to take meals but goes on to add that many Section Controllers prefer to take meals on the board. It may be that the above procedure may have been evolved for averting dangers which may arise if a Section Controller were not available for reception or transmission of vital information. But the evidence establishes that a Section Controller has got to be alert and has always to remain ready to receive and transmit information. It may be that a reliever need not be posted when a Section Controller is away from his duty to answer a call of nature or for taking meals, but, all the same, as admitted by Swaminathan, if he is required to be so absent, he has to give advance instructions in regard to train movements in his section before leaving his place of duty. I am satisfied that the temporary absence, even if permitted, is bound to be for exceptionally

short periods. I cannot accept Swaminathan's evidence that the periods of absence can extend over five to seven minutes. If a Section Controller were to be absent for such a long period, a fast moving train can cover a distance of 8 to 12 kilometres, and there is evidence to show that some block distances are of 7 kilometres only. Under the circumstances, in my opinion, the presumption should be that a Section Controller ordinarily will have little or no period of relaxation or, in any case, that his periods of inaction, rest and relaxation will not aggregate 6 hours in a tour of 24 hours. However, the presumption is not irrebuttable. The evidence discloses that, in some cases, at least, job analyses have revealed that the employments analysed are not intensive. Whether this is so or not only a job analysis can reveal. However, in view of the presumption that, ordinarily, there is little or no period of relaxation in the work of a Section Controller, in my opinion, the following decision will meet the ends of justice : Railway administrations should undertake and finish job analyses in regard to employments of all Continuous Section Controllers and the prescribed authority should pass orders in accordance with law on the basis of such job analyses within two years from the date of this Report. However, if within the above period, a decision on the classification of any Continuous Section Controller is not reached by the concerned prescribed authority, then, with effect from the expiration of the above period, the concerned Section Controller will be deemed to be an Intensive worker and classified accordingly. In the latter case, it will be open to the prescribed authority to reach a final decision on the subject at a later stage on merits in accordance with HER and if and when such a decision is reached, effect will be given to the same.

Staff of Marshalling Yard

6.162. Another class of servants for whom Intensive classification is claimed belong to Marshalling Yard Organisation. That organisation has broadly three branches : (1) branch dealing with personnel matters, (2) trains branch, and (3) field branch. Intensive classification is not claimed in regard to the first-named branch. Trains branch normally comprises of a Head Trains Clerk, an Assistant Head Trains Clerk if required and an Assistant Trains Clerk. Some of these clerks do indoor and some others outdoor duties and some clerks perform partly indoor and partly outdoor duties. Intensive classification was claimed in regard to clerks doing outdoor or partially outdoor duties. However, as already mentioned, this claim has been given up in the course of arguments. Therefore, I am concerned now with the claim for Intensive classification in regard to the third, that is, field branch. The set-up of that branch is as follows : There is a Yard Master at the apex. The Yard Master may be assisted by an Assistant Yard Master or Masters. The latter usually work in shifts. Sometimes, an Assistant Yard Master is assisted by a Supervisor. Below the above staff is a shunting team. This team comprises of a Jamadar called Shunting Jamadar or, sometimes, a Shunting Master, and Pointsmen. Normally, there are four Pointsmen in a shunting team, but, more Pointsmen

may be appointed if there are special circumstances, such that the shunting neck is situated on a curve or the number of sorting lines is more than the normal. The Yard Master is in charge of the marshalling yard and its organisation, and the Assistant Yard Master and the Supervisor, when there is one, are in charge of limited areas in the yard. The main function of the Yard Master and his Assistants is to plan, co-ordinate and supervise marshalling work. The critical work items in a marshalling yard are sorting out and re-forming trains. These items are done by shunting teams. Such team are under the charge of Shunting Jamadars. Sorting of trains is done with the aid of a shunting engine. Each Shunting Jamadar is in charge of one shunting engine. Shunting Jamadar sorts out or re-forms trains with the aid of pointmen. Thus, the main function of a Shunting Jamadar is to sort out and re-form trains. He has to do this work as speedily as possible so that wagons may not lie idle.

6.163. Though the Federation claimed Intensive classification for the Yard Master, such a claim has not been pressed at the time of arguments. In fact, no evidence is led on this point which demands any consideration. As regards Assistant Yard Masters, the evidence shows that a great part of their work is being done in the office. In order to plan and co-ordinate marshalling work, these officials have to remain in touch with the Control organisation and, therefore, they have to be in the office. However, though this is so, they are also responsible to see that marshalling organisation works efficiently and, therefore, these officials have to do some field work, specially when it is necessary to see that shunting work is carried out according to schedules prepared under their or Yard Master's instructions. The above officials have necessarily to go to do field work in cases of hold-ups, if things go wrong or if difficulties arise such as failure of power, non-examination of train in time by train-examining staff or absence of the trains staff on the spot. The kind of work an Assistant Yard Master does depends upon the section of the yard where he works. If the section is one where trains are to be received, he has to ensure that reception lines are cleared as speedily as possible by sending them to shunting neck and by ensuring that trains do not get detained on reception lines. If the section where he works is one where trains are despatched, he has to ensure that train loads are formed in time and in accordance with marshalling and composition instructions; that the formed trains are inspected by train-examining staff and that such trains are despatched to the paths meant for them. If the section is one where supplies to goods sheds, transshipment sheds, sick and other departmental sidings are to be made, he has to determine accommodation available at the sidings and to make arrangements for posting wagons to those sidings in consultation with the staff in charge thereof. All Assistant Yard Masters have to remain in touch with the Control organisation, to note the details of incoming streams of traffic, to report deviations from planning owing to non-materialisation of loads, late arrival or non-availability of power. The duties of Yard Supervisors are more or less the same as those of Assistant Yard Masters. From the above facts, it

is clear that the functions which an Assistant Yard Master or a Supervisor performs are mainly supervisory and quite a substantial part of his time is spent in the office. Even when he works on the spot, his work is mainly supervisory in character. The work mainly consists of issuing directions or instructions so that shunting teams carry out their work as speedily as possible in accordance with schedules. Under the circumstances, I am not convinced that the above employment is of a strenuous nature. In my opinion, Mr. Kulkarni is justified in not pressing seriously the demand for Intensive classification of Assistant Yard Masters and/or Supervisors.

6.164. Therefore, the case which really requires consideration under this head is that of a shunting team. The sections of the yard where a shunting team works are (1) receiving line, (2) despatch line, (3) shunting line, (4) sorting line, and (5) sidings. As already mentioned, the main work of a shunting team is to sort out and to re-form received trains as soon as possible. This work is mainly got done by the Shunting Jamadar. The efficiency or otherwise of the work, to a large extent, depends upon his efficiency and capability. After a shunting engine is attached to the received train (load), the Shunting Jamadar takes seat either in the shunting engine or the brake-van and directs the shunting engine to the shunting neck. If the signals are fixed, he gets them fixed by the cabin by showing hand signals or by shouting or by telephoning. If signals are not fixed, he himself or his team has to show signals by hand. After the train is brought to the shunting neck, he gets the hose pipes of the load uncoupled, if the same has not been done by the train-examining staff at the receiving platform. Then the Shunting Jamadar walks from one end of the load to the other and either marks the cuts with chalk or gets the parts of the load to be cut decoupled. There are three kinds of yards—humping, gravity and flat. In the case of a flat yard, decoupling can take place only along with the cut, but, in a humping yard, this can be done earlier too. Thereafter, the Shunting Jamadar gets the points on the sorting line or lines properly set and locked. After this has been done to his satisfaction, he gets each cut pushed to the appropriate line. The evidence is that, ordinarily, a shunting team attends to the work of sorting out one train at a time and that the Shunting Jamadar will not attend to another train on the receiving line unless his work at the shunting neck is finalised. A Shunting Jamadar has with him a tally of the train-consist and, therefore, he knows how the train is to be broken up and on what particular line each of the wagons is required to go. The sorting lines are so determined that the wagons which will form another train are all on one and the same line. When re-forming a train a shunting team has to see that wagons are marshalled according to the marshalling instructions and rules and, after the train has been so formed, to couple wagons with one another. In execution of the above work, each Pointsman in the team, as a general rule, is assigned a specified type of work. For example, one pointsman is assigned the work of coupling or decoupling wagons, another is assigned the work of setting and locking points, if points are worked from the ground; the third is assigned the work of exhibiting signals and the

fourth is assigned the work of pinning down brakes. It is the duty of the Shunting Jamadar to ensure that there is no dilatoriness between one phase of shunting operation and another.

6.165. The question for consideration is whether the above evidence justifies the classification of a shunting team or any member thereof as Intensive workers or worker. There is reasonable ground for believing that the job of a Shunting Jamadar involves responsibilities. He is responsible for breaking up trains without loss of time and he is responsible to see that trains are similarly formed without loss of time and that correct marshalling is done. In doing the aforesaid jobs, he is responsible for directing all movements of the shunting engine and for ensuring correct setting of points and correctly locking them. He is also required to keep an eye on conflicting movements, specially where goods yards are not separate from marshalling yards. Though, in goods yards, there is only one shunting engine, there is more than one in a marshalling yard. Therefore, the responsibility of a Shunting Jamadar working in a marshalling yard in the matter of safety is greater than that of a Shunting Jamadar working in a goods yard. He has also to be alert because safety of the trains, persons involved in the shunting operations and the other staff, to a large extent, depends upon the vigilance which he exercises in the performance of his work. There is both physical and mental exertion involved in his work. A Shunting Jamadar has always to be on the move. Sometimes, he has to run with the shunting engine and, specially, when working in a flat or even a gravity yard, he has to run with the wagons. There is no doubt that when he has to set and lock points, he has to be in sustained attention. This work comes within the spirit of the Instruction which says that a Pointsman waiting for the arrival of a train after setting points is in sustained attention. Having regard to the fact that he has to be in sustained attention along with performance of a series of other works mentioned above, it may be taken as satisfactorily established that the work of a Shunting Jamadar is *prima facie* strenuous, at least, when he is engaged in some of the operations mentioned above. However, the real question for consideration is whether the totality of the job does or does not involve little or no period of relaxation. The Board contends that a Shunting Jamadar is idle when the shunting engine is engaged in taking water, and the evidence is that the time taken for the purpose is 30 minutes. However, Gumansingh says that this work is done at the end of a shift and that, during that period, Shunting Jamadar is engaged in the task of handing over to his successor. However, even if it is so, that work is not strenuous. The evidence is that, in handing over, Shunting Jamadar acquaints orally his successor with the work already done, the work half-done and that which is to be done after the charge is handed over and gives such other relevant instructions which will enable his successor to carry on his job efficiently. The trend of Swaminathan's evidence is that work will not be strenuous also when the received train is being piloted to the shunting neck. All that a Shunting Jamadar does when engaged in this duty is to travel in the engine or in the brake-van and show necessary signals for

piloting the engine to the shunting neck. According to Swaminathan, there are idle moments also or non-strenuous work after the train is taken to the shunting neck. The work which a shunting Jamadar does before actually pushing of wagons starts is that of making cuts on train and supervision of the work of decoupling. It is true that, during this period, he has to do a considerable amount of walking to and fro and that too in all kinds of weather. However, on an overall estimate of the evidence, I am not convinced that the job of a Shunting Jamadar is such that there is no period of respite whatsoever for him. An attempt is made by Mr. Kulkarni to show that, in the interest of speedy sorting, a Shunting Jamadar is required to resort to some short-cut methods which are bound to cause strain on him. Swaminathan does not accept this. I am in agreement with the evidence of Swaminathan that such short-cut methods may not ordinarily be adopted because shunting staff is always anxious to proceed to shunting neck and thus there is no scope for saving time or increase in output by resort to short-cut methods and that, if a Shunting Jamadar were to adopt short-cut methods, there is a likelihood of some Pointsmen remaining idle. However, it is axiomatic that the answer to the above question of relaxation must depend upon the quantum of work to be done at a particular yard, that is, the number of trains received for disbanding or re-formation. The nature of the work also will vary according to the type of the marshalling yard. In a humping yard, wagons are brought on the correct line by merely humping them to the line but, in a flat yard, they are pulled and pushed by the shunting engine, and in a gravity yard, a wagon is taken on a height and then let off. However, in a humping yard, once wagons are released in quick succession, Shunting Jamadar has to keep an eye on more than one wagon and has to rush from one point to another. As regards the uncoupling Pointsmen, the evidence is that he may have a period of inaction between two successive trains, the interval depending upon the construction of the yard and the volume of traffic in the shift. Swaminathan's evidence is that, normally, about 10 to 12 trains are sorted out in one shift and that each operation takes about 25 to 40 minutes. The period that a decoupling Pointsmen will be engaged during the above operation will depend upon the number of vehicles to be decoupled, the number of cuts made and, according to Swaminathan, also weather conditions. There is also evidence to show that, when decoupling is done, as the cut proceeds, the uncoupling Pointsmen has an interval of inaction of 5 to 15 minutes in both the types of yards—hump and flat. If the train is pre-cut, then, the uncoupling Pointsmen may have to wait till the next train arrives. As regards the other Pointsmen, the distribution of work amongst them is of such a kind that a period of inaction is inbuilt in the same. Mr. Kulkarni contends that Pointsmen who do pinning down work in marshalling or goods yards must be regarded as strenuous workers. Pinning down is done to brake the speed of vehicles so as to avoid vehicles bumping against one another. When vehicles are released from humps or heights, they travel fast. Therefore, Pointsmen have to run with vehicles to pin them down and they have to brake them while running. On humps, they have to run from

one line to another since wagons released from humps are released in quick succession. I agree with Mr. Kulkarni that such work must be regarded to be strenuous, but, the question of classification cannot be determined unless the periods of inaction, rest or relaxation are determined. There is no reason to believe that, in the pinning down work, periods of no relaxation or relaxation of the order of less than 6 hours in a tour of 24 hours are inbuilt. Therefore, I cannot agree with the Federation that Pointsmen engaged in pinning down work must be automatically classified as strenuous. Having regard to the above features of the work of a shunting team, in my opinion, it is not safe to postulate with confidence that its job is of such a nature that the members of the team have little or no period of relaxation or that the periods of inaction, rest or relaxation do not aggregate 6 hours in a tour of 24 or 1 hour in a tour of 8. This is essentially a question of fact which can be answered only on the data collected in respect of a particular team or the members thereof on the spot. Under the circumstances, I am not convinced that the claim of the Federation for an automatic Intensive classification of a shunting team has been substantiated. Such a claim can only be established through a job analysis which must be demanded on the facts of each case. Mr. Kulkarni also presses the case of a Bariwala for Intensive classification. A Bariwala is a worker engaged only on metre gauge sections for straightening buffers and adjusting hooks of vehicles. He operates with an iron bar about 4 feet long weighing 10 kilograms. I do not think that the claim is justified. It is true that, as and when a Bariwala is engaged actually in the above operation, his work involves physical exertion, but the evidence does not leave any doubt that such physical exertion is not a continuous process inasmuch as there is inbuilt a period of inaction between two such operations.

Telegraph Signallers on heavy circuits

6.166. The Federation next claims that Telegraph Signallers employed on heavy circuits should be classified as Intensive. There are three kinds of duties which a Telegraph Signaller performs on Indian railways : (1) operational, (2) non-operational, and (3) extra. The non-operational duties are : (1) booking, (2) checking, (3) sorting, (4) compiling, (5) routing, and (6) delivering messages. The extra duties are : (1) collecting tickets, (2) collecting free service Dak, (3) taking tickets, (4) performance Trains Clerk's duties, and (5) generally assisting ASMs. The operational duties are the main duties. All Telegraph Signallers have got to perform operational duties but the other duties are not necessarily performed by all of them. On roadside stations, when a Signaller is not engaged in performing operational duties, he performs non-operational duties and, on some of these roadside stations, he also performs extra duties. However, at large stations, separate staff is provided for operational and non-operational work. This is done on the ground that no time is available to the operational Signallers for performing non-operational duties. The claim for Intensive classification was made before the Adjudicator also. It is

dealt with by him in paragraph 210 at page 67 of his Report, Vol. I. The claim was made on behalf of Signallers engaged on heavy circuits. However, the term "heavy circuit" does not appear to have been defined before him. It is not defined or explained in the course of its statements by the Federation in this Reference too. Mr. Kulkarni explains, in the course of arguments, that all circuits are heavy where exclusive signalling work is done by Signallers and no non-operational or extra duty work is assigned to them. The claim is made on the ground that the work of such Signallers is strenuous and without any respite. Before the Adjudicator, the claim was made on the ground that such Signallers perform the same type of work as Telegraphists in Posts & Telegraphs Department who, probably, were required to do duties for shorter hours. One of the grounds on which this contention is rejected by the Adjudicator is the difference between the recruitment qualification of a Signaller on railways and that of a Signaller in Posts & Telegraphs Department. The recruitment qualification for a Signaller on railways is speed of 18 words per minute whereas that for a Telegraphist in Posts & Telegraphs Department is speed of 20 words per minute. On railways, a Signaller is allowed to cross the Efficiency Bar only if his speed is 20 words per minute. The Adjudicator also remarks that, as a general rule, it is possible to give Signallers, employed on heavy circuits in large railway telegraph offices, reasonable relief from signalling work. Therefore, the Adjudicator recommends that the claim for Intensive classification should be considered on its own merits only in regard to those Signallers who are continuously engaged on heavy circuits. Now, the evidence discloses that there are three types of circuits in operation on railways. They are described as (1) main, (2) through-wire, and (3) inter-wire. A main circuit is one which is connected with main stations of a section. A through-wire circuit is one which is connected with important stations in it. An inter-wire circuit is one which is connected with all stations in a section. A section is one in which a Telegraph Office operates. Some Telegraph Offices operate on Teleprinters. A significant number operate on Morse Code. Some work on a time-table basis and some others on an open basis. An Office is said to work on a time-table basis when the Offices *inter se* are allowed to work to fixed timings. An Office is said to work on an open basis when no timing is fixed for its working. The evidence shows that, out of 20 circuits in Delhi main Station Telegraph Office, only 2 are classified as Intensive. The job analyses of these circuits were done in 1951-52 but, thereafter, no further job analysis was done at all. According to Mr. Kulkarni, increase in railway work-load has considerably increased work in telegraph offices and that, having regard to this factor, all the above circuits deserve to be classified as Intensive. He contends that, in any case, at least, these circuits which work on time-table basis and work for all 24 hours should be classified as Intensive inasmuch as having regard to those two facts, there will be no respite for Signallers on those circuits. There is no clear-cut and convincing evidence regarding the nature of work which a Signaller has to perform. However, I am prepared to pro-

ceed on the assumption that, when a Signaller is engaged in signalling work, his job demands concentrated attention and, in that sense, the job is strenuous. However, the main question for consideration, as in all other similar cases, is, whether the second condition of Intensive classification is satisfied by this class of workers. Even proceeding on the assumption that a Signaller on a heavy circuit has got to do work of the type mentioned by Mr. Kulkarni, I am not convinced from the evidence that such Signallers will have little or no relaxation or that, in a tour of 24 hours, their periods of inaction, rest or relaxation will be less than 6 hours. It is quite obvious that whether they will have such periods of relaxation or not will depend upon the quantum of work which they have to perform. The evidence adduced by the Federation does not justify the conclusion that a Signaller engaged on heavy circuits will never have periods of such inaction, rest or relaxation. Witness Jagdish Roy says that work-load on main circuits has increased tremendously during the last 20 years. However, he is not able to give any details of increase in work-load, nor is he sure of increase in the number of Signallers during the last 20 years. The mere fact that work-load has increased does not necessarily mean that periods of inaction, rest or relaxation, if any, have disappeared. That will be a question of fact to be determined with reference to each particular office. In any case, in my opinion, a definite answer as to the satisfaction of the second condition cannot be given unless and until the data in regard to each Signaller or each office has been collected and the job has been analysed. I agree that the difference between the recruitment qualifications of a railway Signaller and a P. & T. Signaller has no relevance to the question of classification. The claim for Intensive classification, therefore, may not be rejected on that ground. However, the mere fact that a railway and a P. & T. Signaller render the same kind of duty does not mean that both must be similarly treated in the matter of hours of employment. I have already considered this aspect of the matter in a previous part of this report and I have given my reasons for not accepting the principle that servants working in different departments and rendering the same kind of duties should be similarly treated without reference to the other conditions governing their services. I also cannot accept the contention of Mr. Kulkarni that heavy circuits which work on time-table basis and for all 24 hours should be automatically classified as Intensive on that ground. In my opinion, unless the job is analysed, it is not possible to postulate that it is Intensive in character. Therefore, I reject the claim of the Federation that Signallers on heavy circuits must be classified as Intensive employees.

Certain staff engaged in line clear work

6.167. I have already considered the contention of Mr. Kulkarni that staff engaged in line clear work should be classified as a category between Continuous and Intensive, and negated the same. Now, I proceed to consider the cases of some categories of station staff whose work, according to Mr. Kulkarni should be regarded as strenuous and, therefore, if the condition regarding little or no relaxation is satisfied, they should be classified as Intensive. Mr. Kulkarni

contends that station staff at crossing stations where commercial work is nil or negligible and station staff at stations where 16 trains run both ways on a single line during a cycle of 24 hours, have to perform jobs which are strenuous by themselves.

Station Masters/Asstt. Station Masters

6.168. The normal complement of staff working at a crossing station where there is no or negligible commercial work consists of (1) SM, (2) ASM, (3) Cabinman, (4) Platform Porter, and (5) Gateman or Gateman-cum-Sweeper. If SM performs supervisory duties, then, it is quite obvious that no claim for Intensive classification can be entertained in regard to him. Therefore, I shall consider the case of ASM at the above kind of station as his case will stand more or less on the same footing as that of a non-supervisory SM. Mr. Kulkarni's contention is that the work which an ASM at a station of the above kind performs, whilst he is engaged in line clear duty, is strenuous in character. A station of the above kind may be interlocked or non-interlocked. The evidence is that, at an interlocked station, an ASM is engaged in line clear duty for about 15 to 20 minutes when a train is received at the station, whether it stops or not, and for about 15 to 20 minutes when a train crosses a station where another train is stationary, that is, he is engaged for about 30 to 40 minutes between grant of line clear and receipt of train-out-of-section signal. The evidence is that, in the case of a non-interlocked station, some more time is necessary because at such a station, points have to be set for which ASM is responsible. According to Swaminathan, the outer limit of 20 minutes will cover the case of a non-interlocked station and what actual time will be necessary for the above type of work will depend upon the time taken by a train for running between a pair of stations. There is a controversy as to what portion of the above period is strenuous work. According to Swaminathan, only for 15 to 20 minutes out of 30 to 40 minutes, the work will be strenuous and the rest of the work will not be of that character. According to Mr. Kulkarni, the whole of the above period is strenuous. The evidence shows that duties an ASM performs when a first train is to arrive at his station are as follows : (1) consults Section Controller; (2) if the latter grants permission, operates block instrument; (3) then exchanges his private number with the station in the rear, specifying train number and its description ; (4) instructs his Cabinman about the line on which train is to be received; (5) releases control on signals where applicable ; (6) waits till train-entering-section signal is received from the station in the rear; (7) notes time thereof in his register ; (8) waits for train to arrive ; (9) makes sure that Cabinman has taken off signals properly on the nominated line ; exchanges private numbers with Cabinman about the distance between cabin and train at important and busy stations ; (10) makes sure about complete arrival of train; (11) gets signal on ON position ; and (12) receives token. ASM repeats the above procedure when the second, that is the crossing train, is to arrive at his station, whether it is a through train or it stops at the station. When a crossing train has to stop at a station and is to be despatched, ASM performs

the following further acts : (1) seeks line clear from station in advance; (2) then exchanges private numbers with that station, noting down the details of train ; (3) nominates line to Cabinman; (4) releases control on departure signal and sends token to driver and caution order, if any, to driver and guard; (5) communicates to advance station train-entering-section signal, and (6) informs Section Controller timings of arrival and despatch of train.

6.169. The evidence is almost unanimous to the effect that an ASM is in sustained attention when he is engaged in the above work of receiving or despatching trains. However, the Federation's case is that an ASM is not only in sustained attention when performing the above work, but he is both in sustained and strenuous attention. In other words, according to the Federation, there is a mental strain on ASM whenever he is engaged in the above type of work and, therefore, ASM must be held to be in sustained and strenuous attention during the above period. According to Swaminathan, ASM, when engaged in the work of reception or despatch of trains, is in strenuous attention between following periods only: (1) between operation of block instruments and completion of train register; (2) between acknowledging of train-entering-section signal and noting it down; (3) between giving instructions to Cabinman and his satisfaction that correct signal has been taken off; (4) between receipt of token and his satisfaction that train has arrived complete and is within fouling points; (5) time taken for getting keys back from cabin; (6) between getting line clear message and completion of details in train register; (7) between instructions to Cabinman and his satisfaction that correct departure signal has been taken off; (8) between giving train-entering-section signal and acknowledgment of receipt of that information from station in advance; (9) between putting signal ON and receipt of control from cabin; and (10) between getting train-out-of-section signal and putting block instrument back and completing train register. According to Swaminathan, the aggregate period of such strenuous activities will be 20 minutes in a period of 40 minutes—the total period which he assigns for the purpose of all line clear work in regard to a crossing train. In my opinion, there is some justification for not accepting the above evidence of Swaminathan. Some of the periods assigned by him for the above types of work appear to be under-estimates. Swaminathan says that ASM is not required to see that, after a signal is taken off, it continues to remain in that position. He says that this is so (1) because cases of an OFF signal going on ON position are very rare, especially if signal equipment is kept in a satisfactory condition in the prescribed manner; (2) because whether signal light is on or off after a signal is OFF, it is indicated by an indicator on trunk lines and, where indicators are not there, if light goes off, no damage can occur since the absence of light indicates a danger position and driver will have to stop his train; (3) because there should be no drooping where the multiple aspect upper quadrant and double warning systems are prevailing; (4) moreover, because in a multiple aspect upper quadrant system, drooping is a danger sign which a driver cannot pass; and (5) because

it is the duty of each ASM to see, during his shift, that signals are properly adjusted if they require such adjustment. Swaminathan admits that setting of points and locking them before a signal is taken off is the responsibility of ASM but, according to him, if any difficulty arises in regard to points, the same is required to be set right by signal maintaining staff and, if this cannot be done, then, the concerned station is to be treated as non-interlocked and worked on that basis. He further says that if, for any reason, a signal cannot be taken OFF, ASM gets the train piloted past the defective signal. In spite of all these refinements, Swaminathan has to admit that it is the responsibility of ASM not only to see that the conditions prescribed for grant of line clear exist at the time when line clear is given, but, it is his responsibility to see that such conditions are not disturbed till reception or despatch of train is complete. Having regard to this feature of ASM's responsibilities, in my opinion, there is justification for Mr. Kulkarni's contention that, even the period after release of control of signals till complete arrival of train, is a period during which there must be mental strain on ASM. It is true that, having regard to the devices which have been recently adopted, strain on ASM in regard to that period of time after which signal is taken OFF will be less than before but, however, having regard to his over-all responsibility to see that the conditions necessary for grant of line clear are not disturbed, it is not correct to say that ASM will not be in strenuous attention. There is one more part of Swaminathan's evidence which is not acceptable too in toto. An ASM is required to see that a certain prescribed distance beyond the first stop signal is maintained clear of obstruction. Swaminathan admits that ASM has to see that the prescribed distance is clear of any obstruction before grant of line clear. He also admits that if there is a level crossing between the first stop and the prescribed distance, it is the duty of ASM to ensure himself that the gate is closed to road traffic. Swaminathan's evidence is that, once ASM has assured himself as above, it is the duty of Cabinman to see that there is no obstruction within that distance and the suggestion is that, therefore, ASM has no further duty to perform. It may be that ASM may depend upon the assistance rendered to him by his Cabinman in this respect. The evidence is that mode of maintaining the above positions is prescribed by Station Working Orders and a great deal depends upon what precautions ASM is required to take in regard thereto by such Orders. Swaminathan admits that the duty of seeing that the conditions of line clear are maintained is on the person whose duty it is to see that such conditions are satisfied before grant of line clear. Having regard to this feature of ASM's responsibility, I am not satisfied that there will be absence of strain during the above periods on ASM because Cabinman is expected to assist him in the above manner.

6.170. However, even conceding that there can be a difference of opinion on the subject of strain in regard to the above periods in line clear duty, the further question for consideration is whether such work does or does not become strenuous when S/1 RB/72—19.

ASM, whilst performing the above types of work, also performs other duties such as attending to public and to commercial work, even though such work may be negligible in character. In my opinion, it will be a question of fact in each case whether, when during periods which are regarded as involving sustained but not strenuous attention, ASM has to perform simultaneously other duties which are not in themselves strenuous, the period of sustained attention becomes strenuous too. The quantum and quality of those other duties will have to be measured and studied to decide such a question and no firm decision can be reached unless duties are studied and analysed.

6.171. However, even if one assumes that the whole of the period of line clear duty is strenuous on its intrinsic merit or by reason of the fact that such duty has to be performed in combination with other duties, it is clear that employment of ASM of the above kind cannot be classified as Intensive unless it is further determined whether the second ingredient of the definition, of Intensive employment is satisfied. In my opinion, the evidence does not justify the conclusion that, in an employment of the above kind, necessarily, there will be little or no relaxation or that periods of rest, inaction and relaxation will be less than 6 in a tour of 24 or 1 in a tour of 8 hours. The evidence also does not justify raising of a presumption to that effect. It will have to be investigated in each case whether the above condition is or is not satisfied. Under the circumstances, the claim that SMs/ASMs posted at the above types of stations must be all universally declared to be Intensive must be rejected.

Cabinmen

6.172. As regards Cabinman, I am not convinced too from the evidence that he can be classified straight-off as an Intensive worker at the above type of stations without any job analysis. Cabinman's main function is to attend to train passing duty and, when he is not so engaged, he does such work as cleaning levers, window panes and signals and, where kerosene is used, lighting or extinguishing lamps. The latter kinds of duties cannot be said to be strenuous in nature. He is required to devote attention to train passing duty from the time he gets release over signals till arrival or despatch of train. He sets points to normal position after signal is put on ON position and return of slide. He has also to perform the same type of work when a shunting movement takes place within his jurisdiction. The evidence is that the work of pulling lever involves physical exertion. Whilst discussing the evidence regarding ASMs, I have mentioned some aspects of the work which a Cabinman has to perform in regard to the prescribed conditions on the basis of which line clear is granted. According to Swaminathan, these are the only periods when the work of a Cabinman can be said to be strenuous, and according to him, the total period of such work, in the case of train passing, will be of the order of 10 minutes if a cabin is situated on either side of a station and will be of the order of about 15 minutes where there is a central cabin. I am in agreement with the above assessment as to the character of work of a Cabinman

but, in my opinion, as to what is exactly the period of duration of each type of work must depend upon the actual facts obtaining at each station and can be determined only by job analysis. In my opinion, it cannot be postulated with certainty that such a Cabinman is necessarily an Intensive worker. Whether he is so or not can only be determined on his work being analysed and on ascertainment that all ingredients of the definition of Intensive employment have been satisfied.

Platform Porters

6.173. As regards a Platform Porter at the above types of stations, I am unable to agree that all acts that he is called upon to perform necessarily involve strain. His duties are to collect token from incoming train, deposit the same with ASM, take token from ASM to driver and, if there is any caution order, to take the same to driver and guard. He is also required to do such items of manual labour as loading and unloading of railway materials, filling of pots of water, general dusting of office, and if there is any obstruction at any point, to remove the same if his services are demanded for the purpose. He also does the work of filling signal burners with oil, lighting and extinguishing signals and cleaning signal lines, which work is distributed between him and Cabinman. None of the above kinds of work seems to involve any strain and, in any case, quite a number of them cannot involve any strain at all and, in the latter class of cases, whether strain is involved or not will depend upon the nature and quantum of work to be done. In my opinion, it cannot be said that such a worker is necessarily Intensive because it cannot be postulated that he is engaged in strenuous work with no or little period of relaxation, or that the other conditions of the definition and those given in Subsidiary Instruction No. (3) are satisfied. I may mention that Mr. Kulkarni at the fag-end of his arguments did not press the above claim in regard to Platform Porters.

Staff at stations where 16 trains pass

6.174. As regards stations with 16 trains running during a day, even if it be held that the whole of the period during which station staff is engaged in line clear work involves sustained and strenuous attention, it cannot be said that the work involved will be Intensive within the meaning of the definition of Intensive employment. I agree with the estimate of Swaminathan that such staff at a station with a single line will have definite periods of inaction between two successive trains and that such periods may still be longer when such a station has a double line. If the number of trains passing at a station is 16 each way, even then, I am not convinced from the evidence that workload on station staff will be such that it should be automatically classified as Intensive. It is true that workload on such staff will be greater than workload on staff of a station where only 16 trains pass each way. Swaminathan's evidence is that such a section will be fairly busy. Mr. Kulkarni did not attempt to question him as to whether workload on such staff will be such as to justify its being classified as Intensive. From the evidence as a

whole, I am satisfied that the classification of station staff on such a station must depend upon quantum and nature of work which such staff does during its duty hours and unless an analysis of such work is made, it cannot be stated with confidence whether such staff or any member thereof is engaged in Intensive employment or not.

Certain junctions and other stations

6.175. One of the claims of the Federation is that station staff of certain types of stations should be classified as Intensive on merits without undergoing the process of job analysis. The claim as originally put forward was in respect of such staff at (1) junction stations, and (2) stations where 16 or more trains operate in a cycle of 24 hours. At the time of arguments, this extreme claim is not sought to be justified. As regards junction stations, the claim is now restricted only to those stations where there are marshalling and/or goods yards. As regards stations where 16 or more trains operate, the claim is not pressed. In respect of such stations, a modified claim is now pressed in respect of stations where 16 trains pass, not in all as originally claimed, but each way.

Station Masters/Asstt. Station Masters

6.176. The typical pattern of station operating staff is (1) a Station Master, and (2) an Assistant Station Master. The duties which this staff has to perform are, broadly speaking, of three kinds : (i) administrative, (ii) operational, and (iii) commercial. Administrative duties are, making staff arrangements, grant of leave, issue of Passes to staff, making relief arrangements and attending to disciplinary questions in regard to such staff. The main operational duties are reception and despatch of trains. In fact, these constitute the main duties of such staff. The other operational duties are issuing and taking of tokens, issuing orders for guards and issuing speed restriction orders. Such staff is also responsible for shunting operations within station limits. The commercial duties are booking and delivery of goods, parcels and luggage, issuing money receipts, keeping cash, granting open delivery at certain stations, assessment of damage to goods etc., selling tickets, keeping and issuing tickets, issuing money receipts for excess fare and freight and despatch of cash. These duties are to be performed more or less at all stations, whether they are junctions or road-side stations.

6.177. However, the actual duties which SMs or ASMs perform are not uniform at all these stations. An SM may be either exclusively supervisory or supervisory-cum-worker and be rostered. When he is exclusively supervisory, no claim can be made in regard to him as he will be outside the purview of HER. If he combines supervisory and non-supervisory duties, then, his classification will depend on the quantum of supervisory work which he performs. It is obvious that, in such a case, it cannot be stated with confidence that he is an Intensive worker. In that case, it will be difficult to say that all ingredients of the definition of Intensive classification are automatically satisfied. However, as regards

a rostered SM, his classifications will depend on the actual functions which he performs during his rostered hours. Sometimes, in addition to the functions which he performs during his rostered hours, he may be required to perform duties of supervision over his assistants and work in shifts other than those for which he is rostered.

6.178. An Assistant Station Master is designated according to duties which he performs. He is either a General ASM or a Platform ASM or a Cabin ASM. The duties of a General ASM, specially quantum and nature thereof, may vary according as he is posted at a big station or a wayside station. A General ASM may perform, specially when he is posted at a roadside station, all the three kinds of the above duties—administrative, operational and commercial. However, if the quantum of commercial work justifies it, goods, booking and/or commercial clerks may be appointed to assist such ASMs. This is usually so at big stations. However, if operational work at any particular station is heavy, then, Platform and/or Cabin ASMs are appointed to relieve a General ASM of operational duties. Duties of a Platform ASM, broadly speaking, are to nominate reception lines, attend to reception and despatch of trains, attend to loading and unloading of parcels, ensure punctual running of trains, attend to public calls, answer and deal with complaints, ensure receipt and despatch of telegrams, communicate telegrams received to concerned parties, ensure that unloaded materials are stacked at proper places, look to attendance of staff when SM is not on duty, maintain first-aid box and perform duty of supervising the staff under his control and arrange relief for staff when relief is necessary. There is evidence to show that, at some stations, such Platform ASMs are provided, if workload justifies it, with phone clerks who sit by their side and attend to phone messages from yard staff, control office, train examiner, loco foreman, etc. These phone clerks also dispose of routine matters and assist Platform ASMs in calling guards, booking them, filling in rest registers of guards and doing other odd jobs. Broadly speaking, a Cabin ASM's duties are concerned with grant of line clear to incoming and out-going trains. He is in independent charge of his cabin for obtaining and giving line clear to trains, for setting and lowering signals for all passenger trains and shunting movements in goods yards. He is also responsible for receiving locos from sheds, attaching them to out-going trains and sending locos of incoming trains to sheds without any loss of time. He is also responsible for issuing caution orders to all out-going trains and for operating shunting signals in marshalling yards. Usually, he is assisted by 2 Levermen, 2 Points Jamadars, a Khalasi and a Lampman. There are, however, some stations where only one Leverman is posted.

6.179. From the above materials, it is quite clear that, whilst duties which station operational staff as a whole have to perform at stations are definitive, distribution of those duties amongst various members of such staff is not uniform. The duties of such staff differ according as it is a big station or a small

wayside station. Workload, however, at each of the aforesaid kinds of stations is not and cannot be uniform. Therefore, Mr. Kulkarni does not rightly lay a claim for classifying all SMs and ASMs as Intensive workers. The claim is made only on the basis that such staff has to work at junctions or on stations where 16 or more trains pass each way on a single line in a tour of 24 hours. There is no dispute that, at the former kind of stations, station operational staff do not perform all the above mentioned three types of work. Only station staff at wayside stations do all the three types of work—administrative, operational and commercial. It is also not disputed that, at the above types of stations, station operational staff will have the assistance of commercial staff because of the intensity of operational work and, therefore, at such stations, station operational staff will perform mainly operational duties and, so far as commercial work is concerned, such operational staff will have only the duty of supervising the work done by such commercial staff. According to Mr. Kulkarni, such is the case at some important roadside stations and at junctions where a number of trains pass. At big stations or big junctions where a large number of trains pass, such operational staff may also be assisted by yard staff if operational work is heavy.

Claim for Intensive classification of station staff at big stations

6.180. Now, the claim made by the Federation for Intensive classification in regard to station staff at above kinds of stations suffers from two infirmities. In the first instance, it cannot be said that all duties which such operational staff has to perform are Intensive in nature by themselves. The functions which such staff performs can justify only the conclusion that some duties performed during line clear work are strenuous and that, if circumstances require that non-line clear duties be performed simultaneously with sustained line clear duties, those duties may assume a strenuous character. Therefore, before any member of operational staff at any station of the above kind can be classified as Intensive, the actual duties which he performs will have to be studied and it will have to be determined which of those duties are strenuous in character. After doing so, the question further will have to be asked as to whether there are or are not periods of inaction, rest or relaxation, and if so, what the length of those periods is. Realising the above difficulties, as already stated, Mr. Kulkarni gives up his claim for Intensive classification in regard to station operational staff operating at stations where only more than 16 trains pass in a tour of 24 hours. Instead, he presses the claim that the work which such operational staff has to do is of a heavier kind than the one done at other ordinary stations and, therefore, even if they cannot be classified as Intensive workers, their hours of work should be reduced. This new claim of Mr. Kulkarni has already been considered by me in another part of this Report and, for reasons given therein, the claim has been rejected. Mr. Kulkarni, however, presses the claim for Intensive classification for operational

staff at junctions where there are marshalling and/or goods yards. A junction is said to be a station where trains are received and despatched in more than two directions. It is this restricted claim which now requires to be decided. According to Mr. Kulkarni, line clear work, shunting operations and volume of other duties at such stations make all operations strenuous and do not leave any respite for station staff so that it should be classified as Intensive. I do not think that even the above restricted claim is sustainable. A junction is not necessarily a determinative factor for fixing the nature, quality and intensity of work at a station. All junctions are not alike. Delhi, Anand and Champaner are all junction stations. However, the evidence shows that nature, quantity and intensity of work at these three stations differ considerably. As against this, there are some non-junction stations where nature, quantity and intensity of work are far more than many a junction station. Bombay Central and Victoria Terminus are examples of such non-junction stations. Moreover, as already stated, at major junctions, or even at major stations, where operational work is heavy, station operational staff is given assistance not only of commercial staff but also of other staff who relieve them of a part of their operational duties. For example, at some stations, sub-ASMs are appointed and, at some others, telephone clerks. The evidence is that, at Surat, all ASMs have sub-ASMs and at Viramgam, the creation of a post of a sub-ASM has recently been recommended. Junctions may again be single line junctions or with big establishments and heavy traffic. Kurukshetra, Delhi-Shahadra, Panipat and Rajpura are examples of the first type of junction stations and Ambala Cantt., Jullundur City, Ghaziabad and Saharanpur are examples of the second type of such stations. At such junction stations, greater care may be required to be devoted to avoid conflicting movements, to avoid detention of trains outside signal posts and to ensure connections. Because several trains come and go, the total duration of sustained attention is bound to be more. Such staff may have also to co-ordinate operational work with work done in yards and by Carriage & Wagon Department. Attention which will have to be paid to public also will be comparatively greater as also attention to loading and unloading work and attention to transshipment of parcels. But, in my opinion, the mere fact that the above factors distinguish work done at a junction station from work done at a non-junction station cannot be held as a criterion for classifying staff as Intensive straight-off without ascertaining whether all ingredients of Intensive classification have been satisfied. In this connection, Mr. Kulkarni draws my attention to the observations of the Adjudicator in para 207 at page 66 of his Report, Vol. I that some railways recognise that line clear work at some large stations such as Lahore, Delhi, Amritsar, Jullundur and Saharanpur is so Intensive that staff doing such work is treated as Intensive. On the facts obtaining at these stations, Intensive classification may have been justified on an *ad hoc* basis. However, I am not prepared to hold that such is necessarily the case at all junction stations. Mr. Kulkarni also says that safety of public, members of station staff and members of other staff is involved

at such stations to such a degree that vulnerability to accidents and risk to public life and public property increase to a pitch where strain on operational staff is far more than at other stations. In my opinion, all these considerations, though relevant, do not necessarily establish the intensive character of the employment. I am prepared to assume that, in some cases, the cumulative effect, may be a strain, mental and physical, but, all the same, the question is essentially a question of fact and such a question must be decided on the facts of each case with reference to conditions obtaining at such junction stations. In my opinion, the above remarks apply equally to all classes of such staff whether it is General ASM, Platform ASM or Cabin ASM. The evidence of Gumansingh that a Cabin ASM has hardly any time for relaxation and that he has to be continuously attentive cannot be accepted at its face value. The fact that a Cabin ASM is provided where shunting operations are performed all round the clock, or the fact that such operations are carried on simultaneously with train working cannot, by themselves, also justify Intensive classification. Whether actually an employment at an above type of station is or is not Intensive in nature is essentially a question of fact which can be determined only on the merits of each case.

6.181. Mr. Kulkarni tries to substantiate the claim for Intensive classification of above staff on one more ground, *viz.*, saturated line capacity. A railway line is said to be saturated when density of traffic has reached such a point that no more traffic can be accepted thereon. According to R. B. Lal in "Wagon Usage", at page 93, paragraph 17.11, a single line reaches saturation point when 17 trains pass thereon each way and a double line reaches such a point when 40 trains pass thereon. According to Swaminathan, when 16 trains pass each way on a single line, the section must be held to be fairly busy. I do not think that the fact that a line has reached a saturated capacity has much relevance to the question of classification of any employment on the line. All that can be said is that the line is not capable of absorbing any more traffic, *i.e.* the work on the line is heavy, but whether an employment thereon is Intensive depends on such diverse factors as strength of staff, distribution of duties, character of traffic and time-table schedules, etc.

6.182. Mr. Kulkarni contends that, when at above types of stations, duty performed by staff is continuous, urgent and under pressure, inasmuch as a number of duties, though each of them may not be strenuous, has to be performed simultaneously, nature of employment becomes strenuous. In my opinion, there are several assumptions in this contention. In the first instance, it is a question of fact whether, besides continuous attention, there is urgency in the execution of work and whether all other duties are or are not performed simultaneously and if so, how and what duties have to be performed simultaneously. The above assumption is not justified by the evidence on record. The evidence of Gurlal Singh is that employments of ASMs at some important stations on Northern railway were job-analysed

and it was found that, in some cases, the employments were Continuous. In 3 cases they were found to be Continuous and, in 7 cases Intensive. Mehrotra says that he job-analysed the work of Cabin ASMs at Sabarmati and found that the employments were Continuous only. Actually, these Cabin ASMs had been classified as EIs and Mehrotra recommended them to be upgraded as Continuous. Similarly, Gurlal Singh has given instances where Cabin ASMs classified as Intensive were downgraded as Continuous on job analysis.

Other staff at above types of Stations

6.183. A claim has been made on behalf of other station staff also for Intensive classification in regard to junction stations and where 16 or more trains pass each way on a single line in a tour of 24 hours. The complement of such other staff consists of Cabinmen, Levermen, Pointmen, Watermen and Safaiwalas. For the reasons aforesaid, such a straight-off Intensive classification for such staff also cannot be justified. However, Mr. Kulkarni specially presses the case of Cabinmen at such junctions on the basis of the evidence given by Amar Singh. According to Amar Singh, in a single train movement, about 8 to 10 levers have to be pulled and in a shunting operation, about 6 levers. The evidence shows that the operation of pulling a lever is strenuous work. Therefore, according to Mr. Kulkarni, if 16 trains pass each way, the number of times the levers will have to be pulled will be between 256 and 320 and, according to him, if this is distributed amongst three shifts, there will be no period of relaxation for any of the Cabinmen. In addition to this, Mr. Kulkarni relies upon the fact that on Northern Railway, the operation between lowering of signals and reversal of levers and operations between setting of points in a shunting movement and reversal of levers are regarded as strenuous. Mr. Kulkarni, moreover, contends that the whole of the period from the time that private numbers are exchanged till a train passes or a shunting movement is over should be regarded as strenuous, inasmuch as it is the duty of Cabinman to see that no conflicting movement occurs after the signal is lowered. Therefore, Mr. Kulkarni's contention is that there is a fairly good reason for classifying a Cabinman at junctions or stations where 16 or more trains pass each way straight-off as an Intensive worker. However, in determining this question, the number of Cabinmen working at a particular place and the number of trains which pass in a particular shift and the periods of relaxation or otherwise, have to be ascertained. It is true that, on Northern Railway, the practice is to classify a Cabinman as Intensive if 1080 levers, that is 45 levers per hour, are operated in 24 hours. Such an *ad hoc* classification may be justified. However, in my opinion, it cannot be stated with confidence that, because a station is a junction station or where 16 trains pass each way, a Cabinman must automatically be classified as an Intensive worker. In my view, Mr. Mahadevan is right in contending that cases of Cabinmen working at above stations deserve to be job-analysed but that, without such job analysis, it is improper to classify the employment as Intensive straight-off.

Yard Staff at above types of Stations

6.184. I have considered in another part of this Report the claim for Intensive classification in regard to yard staff and given my reasons for rejecting an *ad hoc* Intensive classification. In my opinion, the fact that such staff works at a junction station or a big station yard cannot by itself be regarded as a good ground for giving such *ad hoc* Intensive classification. For reasons which I have given in regard to station operational staff at junctions, the claim for such *ad hoc* classification in regard to yard staff also must be rejected.

Duty at a stretch of running staff

6.185. The next demand of the Federation is that hours of duty at a stretch of running staff should not exceed 12 from signing-on to signing-off. It is common ground that hours of duty of running staff begin from the time it signs-on at the station of departure where it assumes duty and continue right upto the time when it signs-off at the destination. The time that such staff is occupied from the departure of a train on which it works upto the time the train arrives at the place of destination is called running time. At present, the instructions on the subject are that running duty at a stretch should not ordinarily exceed 10 hours and that running staff should be entitled to claim relief after 12 hours of running duty provided it gives 2 hours' notice for relief to Controller. The instructions say that the over-all hours of work for such staff from signing-on to signing-off should not exceed 14 hours. The demand, therefore, is that over-all limit should be curtailed from 14 hours to 12. Mr. Kulkarni does not challenge the *raison d'être* for fixing longer hours of duty at a stretch for running staff. The literature on the subject shows that it is not possible to frame rosters for such staff fixing normal hours of daily duty. This is so because hours of such duty depend upon such diverse factors as variations of length of runs, locations of engine sheds and running rooms. These hours of duty may further be affected by irregular timings, specially of goods trains, availability of trains for return of running staff to headquarters, incidence of crossings and precedences of trains of varying importance and detentions of trains *en route*. Delay may be due to a number of factors such as increase in traffic, bad coal and strain on engines etc. Therefore, it is common ground that from an operational standpoint it is not possible to determine fixed hours of duty for running staff. In order that such staff may operate efficiently and in the interest of administration as a whole, it is necessary that a wide latitude should be left as regards the hours of duty at a stretch, although bi-weekly average hours for them should remain unaltered in spite of above difficulties. As a general rule, running staff is classified as Continuous and, therefore, its bi-weekly average hours of duty must not exceed the limit prescribed for Continuous workers. Because no fixed rosters can be prepared for such staff, a fixed day of rest cannot be given to them also. The Federation does not demand any change as regards the above pattern of duty in regard to this particular staff. What it contends for is that

hours of work which such staff is called upon to perform at a stretch are too long and cause a strain on running staff which require an urgent revision. This subject also came up for consideration before the Adjudicator. The Adjudicator points out the above realities which require that longer hours of work should be exacted from running staff. However, the Adjudicator concludes that an upper limit as regards duty at a stretch should be fixed on humanitarian considerations and considerations of public safety, the confidence, in regard to which is likely to be shaken if a worker is called upon to work continuously for several hours together. The Adjudicator says that witnesses who gave evidence before him were unanimous that such continuous duty can be performed upto 12 hours and that, therefore, witnesses of the administration accepted the plea that fatigue will set in after completion of duty for this period. Therefore, he makes certain recommendations on the subject. The present instructions are substantially based on those recommendations. His recommendations are that hours of running duty at a stretch should not ordinarily exceed 10 hours and such staff should be entitled to claim relief after a running duty of 12 hours, provided 2 hours' notice is given to administration in advance. This recommendation is made on the ground that periods from signing-on to departure of a train and from arrival of a train to signing-off do not involve strenuous or tiresome duties. From the above recommendation, it will be noticed that, if 2 hours' notice is not given, running staff can be called upon to perform duty for any length of time. Consequently, in some cases, such staff was being called upon to work for as many as 16 to 18 hours. Exaction of duty for such long periods came to be criticised by two high-powered Committees appointed to deal with incidence of accidents occurring on railways. Probably, because of this criticism, instructions were issued in 1968 by the Railway Board that the total hours of duty should be limited to 14 hours from signing-on to signing-off. The Federation complains that even these instructions are not being implemented in full. The explanation on behalf of the Railway Board is that though an earnest attempt is being made to implement these instructions, because of circumstances beyond the control of railway administrations, breaches thereof do take place. However, the Railway Board contends that such breaches are few and far between.

6.186. Therefore, the main question for consideration is whether over-all hours of duty should be reduced from 14 to 12. The problem deserves a serious and careful consideration. The problem essentially is of reconciling the operational requirement of administration with the human needs of staff. According to railway authorities, if the upper limit is relaxed, then, several operational difficulties will crop up for administration. Difficulties arise because if a definite upper limit is fixed, then, running staff will have to be relieved at odd mid-stations, or if such relief cannot be provided, trains will have to be stabled at intermediate points. Therefore, to meet such situations, administration will have to provide such additional facilities as (1) stabling lines at intermediate points, (2) watering and coaling facilities at such points, (3) spare crew

rest vans will have to be run on a large number of trains, and (4) a larger complement of train crew in various categories will have to be provided. These difficulties have been pointed out by Swaminathan. There is also evidence to the effect that movements of traffic will be affected if trains are stabled on the way. The line on which a train is stabled will not be available for train movements with the consequence that crossings of other trains will be affected. There is also evidence to the effect that there are cases in which, to complete journey from one yard to another, 12 to 14 hours' run is necessary from signing-on to signing-off. There is also evidence to the effect that, in many cases, the distance between the place where overall time-limit is completed and the place of destination is so small that, whereas there may not be much additional strain on staff to cover the distance, dislocation of traffic will be such that trains may have to be detained for 1 to 3 hours even if programmes are laid down with precision. The evidence shows that, because of these difficulties, even in cases where overall time-limit of 14 hours is exceeded, appeals are made by authorities to running staff to complete journeys. However, on the other hand, the complaint of the Federation is that such are not the only occasions on which the upper total limit is exceeded. According to one witness, the incidence of such excess is 5 to 6 occasions for each member of running staff in a period of 14 days. However, in order to understand and appreciate the problem in its true and proper perspective, it is necessary to bear in mind that the problem concerns, more or less, running staff dealing with goods trains. The evidence is that, so far as mail and express trains are concerned, because they operate on scheduled time-tables, definite rosters can be prepared and running duty exceeds 10 hours very rarely. However, as regards goods trains, including even through goods trains, because of operational difficulties, such time limits cannot be adhered to. As regards through goods trains, they have scheduled times of departure and arrival, but, the evidence is that, even in their cases, timings cannot be adhered to. The position in regard to slow goods trains is still worse. The evidence of Swaminathan, however, is that sections where work is exacted for more than 14 hours are those which have reached a saturation point and that cases of such excessive work are more pronounced where there is steam traction and that such excesses occur also in sections which are congested or where engine failures and similar other contingencies occur. According to Swaminathan, with dieselisation and electrification, the magnitude of the problem must dwindle, although he admits that even with dieselisation or electrification, the problem will not be eliminated altogether. Swaminathan points out that the problem can be solved at present by providing additional facilities such as mentioned above, but that huge expenses will have to be incurred and that, with the progressive dieselisation and electrification, such expenses will have been wasted because they will become infructuous as and when dieselisation and electrification take place. According to Swaminathan, things must improve within 8 to 10 years and that working beyond 12 hours will be an exception after dieselisation and electrification take place. However, it is not possible to state with

certainly as to when dieselisation and electrification will be complete. In any case, so far as electrification is concerned, it will be only on trunk lines. Therefore, if the total hours of work have to be reduced on humanitarian considerations, I do not think it will be wise to wait till the above programmes are carried out. Swamina'han says that some remedial measures have been taken, such as where line capacity is saturated, increased efforts are being made to provide relief in time and orders have been issued even to stable trains if it is necessary to do so.

6.187. I am not in agreement with the view that *status quo* should be maintained because of the prospective improvements which are expected to reduce the size of the problem. In dealing with the problem, one must bear two factors in mind. The first factor is that the period between signing-on and actual departure of a train is comparatively a period of light work and that such work is not likely, beyond consuming time of staff, to cause any strain on its physique. The second factor is that, if detention of a train takes place at a place of departure, nature of work will be equally light. The process of fatigue which can affect human physique will start only after a certain time elapses from commencement of running duty. Therefore, in my opinion, what is required to be done is to set an upper limit on running duty. Under the present rules, in substance, no such limit has been prescribed because of the rule which requires that 2 hours' notice must be given if the concerned staff requires to be relieved after completion of 12 hours' duty. Now, there is evidence to the effect that this proviso is difficult to comply with in a large majority of cases. The concerned staff is not often able to foresee that the journey will take 14 hours. Even if it foresees the same, it may not be possible to communicate notice to Controller or, in any case, journey may have to be continued further in spite of the notice because the relieving staff may not be able to come for relief for various reasons. In my opinion, there is no reason why such a burden should be thrown on the members of the staff. If once the upper limit is determined on some rational basis, it should be adhered to. Of course, to meet the above difficulties a latitude may be given to administrations to demand additional hours of duty by giving timely notice to the concerned staff. Having regard to the above factors, in my opinion, the problem for consideration is whether 12 hours' running duty, at present prescribed, is or is not such as should be required to be reduced on humanitarian and health considerations. It will be useful to consider the problem in the context of a few broad facts which have a bearing on it. As a general rule, running staff is called upon to perform both preliminary and complementary duties. The existing rules on the subject are that a driver is required to attend duty 45 minutes before scheduled time for departure of train on which he is to work and to remain on duty for 15 minutes after his train has arrived at its destination, and a guard is required to attend duties 30 minutes before scheduled time for departure of the train which he is to conduct and to remain on duty 30 minutes after its arrival at destination. Running staff will be governed by hours of duty fixed for Continuous workers. Therefore, broadly speaking, running staff

can be expected to render 9 hours' duty continuously. The weekly hours of Continuous workers are to be fixed on an average of two weeks. Therefore, unless running staff is called upon to render duty by an order passed by the appropriate authority under section 71-C of the Act, such staff cannot, under HER, be called upon to perform duty for more than 108 hours on an average in two weeks. Exaction of duty for such a bi-weekly period must be considered to be reasonable. Moreover, this does not offend against any health and humanitarian considerations. The problem concerns the maximum period for which duty can be exacted from such staff at a stretch. From the Wanchoo Committee's Report, 1968, it appears that about 14.2 per cent of C grade drivers was required to perform such duty at a stretch for more than 12 hours in 1967-68 of which .6 per cent was required to perform duty for more than 20 hours. (*Vide* paragraph 266 Table 57 Part I). The Report shows that, on 5 railways, the percentage of such C grades drivers which was required to work for more than 12 hours was 15 to 20 and that, on Southern Railway, the percentage was as high as 34.3. Both international Conventions and national legislation on industries recognise the need for fixing an upper limit not only for weekly hours of work, but, also daily hours of work including rest. In fact, under the Factories Act, daily overtime beyond a certain limit is not permissible at all. This is done on the footing that exaction of work beyond a certain limit on any one day is or can be also injurious to health of a worker. Exaction of continuous work on any one day beyond a certain limit may be inhuman too. I have already referred to the fact that HER do not impose any daily limit of work for any railway employee. This is not done because it is assumed that more work will not be taken from railway workers except when it is necessary under the circumstances mentioned in section 71-C of the Act or except for meeting contingencies beyond the control of administrations. In any case, it is assumed that exaction of daily overtime will not be made from railway workers as a regular feature. There is no complaint on this score of any railway staff other than running staff being exploited in any such manner by being required to work at a stretch more than it can bear. However, having regard to the figures quoted by me above and the observations made by the two high-powered Committees and evidence adduced before me, I have reasonable grounds for believing that, because of latitude which HER gives to administrations, duty is exacted from running staff, specially from C grade crew, not by way of an exception, but, on a scale which must be regarded to be abnormal. In answering the problem, one must bear in mind that even in case of Essentially Intermittent workers, I have thought it fit to fix only 12 hours' rostered duty as reasonable. Though running duty is not of an Intensive character, it is duty which demands continued attention, alertness and exertion in its performance. Any over-exaction from such staff has important and far-reaching repercussions on safety of public, person and property. Such staff has to work under conditions which may set in fatigue earlier than it may occur in cases of staff working indoors or at stations and depots. Having regard to all these considerations, in my opinion, running duty at a stretch of 10 hours

only can be considered reasonable. As far as possible, exaction of work for more than such number of hours at a stretch should be avoided unless there are other over-riding considerations. Having regard to the fact that running staff has, as a general rule, to perform preliminary and complementary duties of approximately one hour per trip, it follows that overall duty of such staff will normally be of 11 hours at a stretch per trip. However, some allowance must be made for the fact that, specially in the case of goods trains, pre-departure detentions and detentions enroute, take place which detentions cannot be easily prevented for reasons beyond control of administrations. Acceptance of the demand of the Federation will leave a margin of about one hour to railway administrations to cover such detentions. Therefore, the present demand to restrict overall hours of duty at a stretch to 12 hours must be regarded to be reasonable. Such an overall maximum limit is in accordance with international trends. The Report of the Inland Transport Committee, Seventh Session, Geneva, 1961, on General Conditions of Work of Railwaymen, gives information on this subject at Table X printed on page 66 thereof. From this Table it appears that, except in Switzerland, United States and Federal Republic of Germany, standard daily working hours of travelling staff vary from 10 to 12. In Switzerland, though the average daily working hours of 7 hours 40 minutes may be increased to 8 hours 40 minutes, in some exceptional cases they may be increased to 13 hours and even 15. In Federal Republic of Germany, the ordinary period is also 12 hours but this can be extended upto 18 hours if a turn of duty includes "a deadheading journey or falls during the day and between two periods of night rest spent at home with a break of at least four hours at home". United States restricts by law the maximum time of duty for operating and running staff and the same is restricted to 16 hours. But, it is not quite clear when and under what circumstances duty for maximum period is exacted. From the above summary it appears that, even in Federal Republic of Germany and Switzerland, the normal standard actual daily working hours are 12 or less. Under the circumstances, in my opinion, the demand of the Federation that total hours of duty at a stretch should be fixed at 12 is reasonable and accords with international trends. However, before reaching a final conclusion, it is but proper that the difficulties pointed out by Swaminathan and the effect which the fixation of the number of hours of duty at a stretch will have on the movements of traffic and especially goods traffic, must be borne in mind. The effect of Swaminathan's evidence is that railway administrations must be given some time to achieve the objective of the present demand. Mr. Mahadevan also makes an impassioned plea to the same effect. I have given my anxious consideration to this aspect of the matter as well. On the whole, I have come to the conclusion that, in order to protect the interests of running staff and for health and humanitarian considerations, even whilst allowing some latitude to railway administrations on the grounds mentioned by Swaminathan, an upper limit for total number of hours of duty at a stretch must be fixed with immediate effect and, what is more important, such upper limit must be adhered to. With the same

end in view, it is necessary that a time schedule should be fixed for reaching the above objective within a reasonable period of time, beyond which railway administrations should not be allowed to exact duty from running staff for a total period of more than 12 hours at a stretch. Therefore, my decision is as follows : Running duty at a stretch of running staff should not ordinarily exceed 10 hours but such duty may extend to a maximum period of 12 hours, provided the concerned administration gives at least two hours' notice before the expiration of 10 hours to the staff that it will be required to perform running duty for two hours more, provided further that the total maximum hours of duty from signing-on to signing-off does not exceed 14 hours, provided further that the total maximum hours will be progressively reduced by half an hour every two years from the date of this Report till the target of 12 hours is reached, i.e. at the end of eight years from the date of this Report, the total maximum hours of duty at a stretch from signing-on to signing-off shall not exceed 12 hours.

Time for handing and taking over charges

6.188. One of the grievances of the Federation relates to the question of time required by some categories of railway workers for taking and handing over their charges. The Federation's grievance on this score is two-fold. One is that certain categories of railway servants, to be presently mentioned, cannot perform their duties unless they come some time before rostered hours and/or leave some time after such hours. According to it, such early arrival and/or late departure is inbuilt in the work entrusted to such workers. Secondly, the Federation's grievance is that these periods of time are not treated as periods of duty. In fact, it says that, at the time of job analysis, the above question is conveniently ignored by teams of Inspectors and no investigation is made in that regard, nor any record kept thereof, so that the question remains shrouded in obscurity. In the result, the Federation complains that injustice is being done to workers inasmuch as, though they spend time in taking and handing over charges, they are not given credit therefor by their respective railway administrations. The categories for whom these grievances are made are : (1) Wireless Operators, (2) Deputy Chief Controllers, (3) Section Controllers, (4) SMs, (5) General ASMs, (6) Platform ASMs, (7) Cabin ASMs, (8) Booking Clerks, (9) Parcel Clerks, (10) Yard Masters, (11) Assistant Yard Masters, (12) Shunting Jamadars, and (13) Cabinmen. The periods claimed by the Federation for taking and handing over vary from category to category. The periods vary from 15 to 45 minutes. In view of the Adjudicator's recommendation that time of less than 15 minutes required for the above purposes should be ignored, and in view of my own decision on the subject, if the time required for the above purposes is less than 15 minutes, it is not of any practical significance. However, if the time required is 15 minutes or more, then, in view of my decision that railway workers can be called upon to do preliminary and/or complementary work upto a certain limit, the question becomes of vital importance because (1) overlapping rosters will have to be prepared for such workers and

(2) though the time spent upto a certain limit will not be regarded overtime, service for such additional period will be one of the elements which will have to be borne in mind when fixing their pay-scales.

6.189. It is axiomatic that a worker is not bound to come earlier than, or to remain on duty later than, his rostered hours. Having regard to my decision that, if the total period of such earlier arrival and/or later departure is less than 15 minutes, such period is to be ignored and is not to be mentioned in the roster, it is obvious that those workers, who are required to come earlier and/or remain later by a total period of less than 15 minutes, will be required to come earlier and/or depart later for such a total period even though the same may not be mentioned in the roster. Therefore, the present practice of railway workers coming earlier and/or leaving later than by less than a total period of 15 minutes shall continue to prevail. It follows that, even if an administration wants any railway worker to come earlier and/or remain later by a total period of 15 minutes or more, then, the railway servant is not bound to do so unless and until specific orders are passed to that effect and the period or periods for which he is required to come earlier and/or remain later are mentioned specifically in his roster. This will be so even though such early arrival and/or late departure may be inbuilt in the employment of such a worker. In my opinion, unless such specific orders are passed and specific rosters prepared, the concerned workers are not bound to attend their posts of duty earlier and/or remain thereon later than rostered hours, whatever may be the consequences of such non-arrival or non-detention on railway working. There is evidence that such early arrival and/or late departure is inbuilt in the service rendered by some categories of railway servants. Gurlal Singh admits that categories Nos. (3) to (12), mentioned in paragraph 6.188, are the main categories, in the rendition of whose service extra time for handing and taking over is inbuilt. From the evidence adduced in the case, I am satisfied that all the categories of railway servants mentioned in paragraph 6.188 do require time for handing and/or taking over. However, the controversy is as to what is the actual time which is necessary either for early arrival and/or late departure in the case of each of the above categories. This is the real controversy between the Federation and the Board. In some categories, only early arrival is involved and in some others late departure. In a few others, both early arrival and late departure are involved. There is sharp conflict of evidence on this aspect of the matter. Without intending to be dogmatic on the subject, I propose to say a few words on it in the light of the evidence adduced in the case.

(i) *Wireless Operators.*—According to Prasad, a Wireless Operator has to come approximately 15 minutes before his rostered hour. According to him, before the incoming Wireless Operator puts on headgear, he has to report his presence to his Inspector; has to take charge of all uncleared messages; has to acquaint himself with special instructions which may have been issued in regard to the channel on which he is to work, and has to arrange all messages according to their priorities. He says that a Wireless

Operator undertakes further transmission of messages under the process of transmission only after he has gone through the above processes. The evidence, on the face of it, is halting as to the time required. I am not convinced that the various operations which are enumerated above will necessarily require 15 minutes or more. However, there can be particular boards or channels on which some more time may be necessary for taking over charge. If such is the case, then the concerned administration will have to give specific orders and prepare overlapping rosters. Except as and when this is done, the present practice of reporting for duty before rostered hours by such period as may be less than 15 minutes will continue to be followed in the case of Wireless Operators.

(ii) *Deputy Chief Controllers.*—According to Sur, a Deputy Chief Controller is required to come 45 minutes before rostered hour. He says that this is necessary because such an official has to acquaint himself with the positions on all boards; is required to know all general policy circulars issued by administration; has to peruse a number of books and registers mentioned by him at page 170 of his evidence; has to collect figures from his own and other railways; and is required to acquaint himself with the latest positions in regard to locos, trains, drivers and guards. According to him, the incoming and out-going Deputy Chief Controllers are also required to be together for about 15 minutes. He further says that an out-going Deputy Chief Controller is also required to stay on to fill up records and reports to be sent to Headquarters Office. Swaminathan admits that a Deputy Chief Controller has to come some time before rostered hour but, according to him, a Deputy Chief Controller hardly stays over after rostered hours. Swaminathan says that the time required for handing over is hardly 5 to 6 minutes. According to him, before assuming charge, a Deputy Chief Controller has to acquaint himself with (1) special orders, (2) positions of all control circuits and staff manning them, (3) number of goods trains ordered in the previous shift which are waiting for movement or which have not moved out, (4) general running of important mail and express trains during his duty hours, and (5) general conditions of various sections. He has enumerated periods of time for each of the above operations. According to him, general conditions on his various boards can be gathered by glancing at charts, because what is required to be gathered is whether there is any congestion or bunching, and, if there is any, he can later on probe into the reasons for such congestion or bunching and devise remedial action. According to him, a Deputy Chief Controller can deal with such matters as interchange of stock with adjoining divisions, power positions, crew positions and information regarding train ordering, after he has commenced working. According to him, a part of the information regarding train ordering can be gathered from some of the registers prepared by his predecessor. He also says that the above official is not required to scrutinise previous diaries immediately on assumption of charge, because if there is any special thing to be noticed, it is bound to be mentioned by the out-going Deputy Chief Controller. He admits that an out-going Deputy Chief Controller has got to write up his diary but, according to

him, this can be done during the last part of his shift and that, he will be required to stay over only when some extraordinary contingency occurs. Whilst denying the practice of two successive Deputy Chief Controllers working together at one and the same time, he admits that there is an overlap of 5 or 10 minutes when they are physically present together. He admits that, during such time, the relieved official conveys important information to his reliever. The evidence of Swaminathan is based only on his experience on Central Railway. However, having regard to the reasons given by Swaminathan, the evidence of Sur regarding the time taken by a Deputy Chief Controller for taking over can be regarded as exaggerated. But, having regard to his above admission, Swaminathan's evidence that late departure of a Deputy Chief Controller hardly takes place may not be taken at its face value. For the reasons I have given whilst discussing the case of Section Controllers, in my opinion, the controversy regarding the time to be taken by Deputy Chief Controllers for taking over and/or handing over should be dealt with and solved in the same manner in which I have decided the controversy in regard to Section Controllers.

(iii) *Section Controllers*.—Sur says that Section Controllers have to attend duties at least 30 minutes before rostered hour. He says that a Section Controller has to do so because he has to look into instructions issued by Chief Controller or operating officer; has to acquaint himself with circulars and notices; has to be acquainted with special traffic that may have to be moved on that day, including oversized consignments; has got to go to Deputy Chief Controller for special instructions; has to obtain information regarding trains ordered but which have not yet departed; has to go to Power Controller to acquaint himself with power positions, and has to visit other boards and take notes of trains running on those boards, with their load particulars and similar other information. According to Sur, all the above operations engage a Section Controller for about 20 minutes. He says that, then, a Section Controller goes on to his own board and puts on his spare headgear and watches movements of trains in his own section and acquaints himself with the positions thereof. Sur deposes that an out-going Section Controller is not free from responsibility the moment he is relieved; that he has to stand by the side of his reliever and watch movements of trains for about 15 minutes and, then, has to fill up some records. According to him, he does so because if any mishap takes place during 15 minutes after his relief, he is held responsible. According to Sur, all the above operations are necessary to be performed by the reliever and the relieved in order that the reliever may be able to perform his duties efficiently and fluidity of train movements may be maintained. However, Sur admits that there are no Standing Orders on his railway requiring Section Controllers to attend 30 minutes before rostered time and to remain present on board for 15 minutes with an incoming Section Controller. According to Swaminathan also, there are no specific instructions on the subject but he admits that Section Controllers do come some time before rostered hours. Swaminathan, however, does not admit that they stay on after rostered hours. According to him, Section Con-

rollers are required to come only 5 to 6 minutes before their duty hours and not 30 minutes. Swaminathan gives some reasons as to why more time is unnecessary in the case of Section Controllers. These reasons are (1) Section Controllers are intelligent and experienced staff, (2) they are given a learning trip of their sections before being posted to them and, therefore, they are well-acquainted with lay-out and other characteristics of their sections, and (3) when they have to deal with boards of 13 to 15 trains, five minutes are enough for them to take over and start their work. Swaminathan admits that, before commencement of their duty, Section Controllers do consult Deputy Chief Controllers and adjacent boards to find out if anything special is to be borne in mind and which trains are likely to come into their sections. But, according to him, 5 to 6 minutes will be enough for all these operations inasmuch as quite a large number of operations deposed by the Federation witnesses can be taken care of by Section Controllers immediately after the commencement of their duties. According to him, the only items on which information is necessary to be gathered in order to enable Section Controllers to do their work efficiently are that they must know whether there is any development in their sections which will introduce an abnormal pattern of train movements such as Presidential trains, diversion of long distance express trains to other routes owing to interruptions, out-of-course shunting on express or mail or passenger trains and running of ODC trains. According to him, it is not necessary for an out-going Section Controller to wait at and watch his board after rostered hours because his chart can give his successor an idea of the positions of train movements at a mere glance, as the out-going Section Controller must have indicated by dots the plans prepared for train movements for the next 15 minutes. He admits that an out-going Section Controller is responsible for plans done for 15 minutes next after he is relieved but, according to him, that is all. He is not responsible for actual execution of the future plans of train movements; if anything goes wrong with the planning, he will be responsible but, if anything goes wrong because of wrong execution, he will not be so responsible but his successor will be. According to Mehrotra, handing over time for a Section Controller is hardly 5 to 10 minutes, and according to Gurlal Singh, during job analyses, he never found any Section Controller reporting 15 minutes before or leaving 30 minutes after rostered hours. He says that, on the contrary, in Jodhpur section, the time recorded for taking over and handing over for a Section Controller was 5 minutes. *Prima facie*, the reasons given by Swaminathan are impressive. However, there are instructions in the Operating Manuals of at least two railways which conflict with the evidence of Swaminathan as regards the period by which an incoming Section Controller is required to report for duty before his rostered hours. According to paragraph 3025 of N.W. Railway's Operating Manual, 1939, a Section Controller is required to report for duty 15 minutes before rostered hours, and according to paragraph 9018 of Northern Railway's Operating Manual, 1962, he is required also to do the same. According to paragraph 2009(c)(i) of the Operating Manual of South Eastern Railway, 1967, a Section Controller

is required to report for duty 30 minutes before his rostered hours. According to Gurlal Singh, Section Controllers on Northern Railway have made a representation that a period of 15 minutes should be allowed for taking over and handing over their charges and that such period should be included in their rosters. He says that, however, such time was not included in their rosters because of the Board's letter No. E(ADJ)55/31, dated 31-10-1956, a copy of which was sent to the Federation by the Board's letter dated 10-1-1957. There is also some other evidence on record to show that Section Controllers come 30 minutes before and leave 15 minutes after rostered hours. It may be that this evidence may be exaggerated as to the period of time, or that evidence relating to late departure of the relieved Section Controller may be interested testimony; but, all the same, Swaminathan's evidence as to the period of time does conflict with the instructions issued by at least two railways mentioned above. The evidence discloses that, at the time of actual job analysis, early arrival of incoming Section Controller is not recorded, nor is any attempt made to discover whether a relieved Section Controller has to stay on for some time more. According to the evidence of the Inspectors, this is not done because job analysis is undertaken only after the commencement of a roster and ends with it. I am of opinion that an important matter like this should not be left in such an uncertain state. Either early arrival of a Section Controller and/or his late departure is or is not necessary for efficient performance of his duties. If it is so necessary, an administration must be able to make up its mind as to the period of time by which a Section Controller should come earlier and/or depart later, either generally or with regard to specific boards. Under the circumstances, I have come to the conclusion that, whilst the present practice on different boards may be continued, the administration concerned should make up its mind on the subject within six months from the date of this Report and issue specific instructions on the subject and get specific rosters prepared for all Section Controllers or for such of them as may be required to perform preparatory and/or complementary duties for 15 minutes or more and in that contingency fix the extent of time for such early arrival and/or late departure. I envisage that though it may be easy to fix a general standard for all boards, there may be exceptional cases in which different periods of time may be necessary. It will be for administrations to point out the exceptions. In any case, there is no doubt whatsoever that if the required period of time is 15 minutes or more, then, overlapping rosters will have to be prepared for Section Controllers. I further decide that, after the lapse of the limit of six months, Section Controllers will not be required to attend earlier and/or depart later by a total period of 15 minutes or more unless they are required to do so by their rosters or specific orders of their superior officers.

(iv) *SMs/ASMs*.—As regards SMs, General ASMs, Platform ASMs, and Cabin ASMs, the evidence on behalf of the Federation is that they are required to come before and/or stay after rostered hours for taking over and/or handing over charges. The period of time taken for such purposes, according to evidence varies from SM/ASM to SM/ASM and also

according to the importance of stations where they work. The evidence is that an SM/ASM requires 30 minutes for the purpose, a Platform ASM 30 minutes, and a Cabin ASM 20 to 30 minutes, and that, at stations where cash is to be handed over or at junctions, an SM/ASM requires 45 minutes. Balasubrahmanyam deposes about the acts which a Platform ASM is required to perform after rostered hours. There is reason to believe that he has to perform such acts. However, in my opinion, the periods of time assigned by Balasubrahmanyam for the performance of those acts are exaggerated and cannot be implicitly relied upon. There is good evidence that an SM/ASM is required to fill up a diary in which he incorporates some important particulars. The evidence is that this diary is being filled up after rostered hours are over. Having regard to the number of details which have to be mentioned in the diary, it is probable that, if the diary has to be written after rostered hours, the time consumed may not be as little as 5 to 10 minutes as contended by the Railway Board. The contention of the Railway Board is that a major portion of the diary is written during rostered hours and only some parts thereof are such as cannot be filled up during such hours and are so filled up after such hours. There is also reason to believe that when an SM/ASM does commercial work or has to keep cash, he has, before being relieved, to hand over valuable articles and cash to his reliever. There is conflict of evidence as to whether all the processes so executed after rostered hours are or are not noted in sheets of job analyses. According to some witnesses, it is so done and, according to some others, it is not so done. In my opinion, whilst a definite answer cannot be given that all SMs and ASMs, including Platform and Cabin ASMs, do take more than 15 minutes in handing over, it will be a question of fact, depending upon the volume of work, including cash handling work at stations and the extent of information which is to be incorporated in the diary, as to whether the time consumed for handing over does or does not exceed 15 minutes. Therefore, in my opinion, instructions require to be issued in each particular case, either by analysing jobs of SMs and ASMs including Platform and Cabin ASMs, or without such analysis, whether the required period of time for taking and/or handing over is less than 15 minutes or otherwise and if it is 15 minutes or more, definite rosters should be prepared on that basis for all SMs/ASMs. In some cases, such periods of time may have repercussions on the question of their classifications also, that is, whether their employments are Continuous or Essentially Intermittent. The concerned administrations should take steps to issue such instructions and finalise rosters within 6 months from the date of this Report, failing which the SMs/ASMs of the above types will be deemed to be required to come earlier and/or depart later by a total period of less than 15 minutes only before or after their rostered hours and no more.

(v) *Booking and Parcel Clerks*.—As regards Booking and Parcel Clerks, there is no doubt that some time is consumed in taking over and handing over charges, inasmuch as valuable articles, property and cash have to be exchanged between the reliever and the relieved. However, it cannot be postulated with confidence that the period of time required for all

or any of the above purposes at each and every station is the same. The extent of time will depend upon the workload at each station. Under the circumstances, in my opinion, if the administration requires such staff to come and/or depart earlier and/or later than the rostered hours, by 15 minutes or more, specific instructions should be issued to that effect and fresh rosters prepared accordingly.

(vi) *Yard Staff*.—As regards yard staff, in my opinion, evidence given by Swaminathan is more specific and reliable than other evidence on record. There is no clear-cut evidence about the time a Yard Master requires for taking over and handing over. I agree with Swaminathan that an outgoing Assistant Yard Master has only to transmit information which is readily available. The information which is to be conveyed by an outgoing Assistant Yard Master to an incoming Assistant Yard Master is on such topics as (1) trains already ordered and waiting for despatch, (2) occupation of reception lines, and (3) occupation of other lines. As regards the first two types of information, since AYM is required, during his duty hours, to follow the progress of work in yard, he is bound to be up-to-date in his information when the time for relief comes. Only as regards the third item, before closing his diary, he will have to collect information from a Shunting Jamadar. I agree with Swaminathan that much time cannot be required for collecting such information.

(vii) *Shunting Jamadar*.—As regards a Shunting Jamadar, I agree with the assessment made by Swaminathan regarding the time required by such a Jamadar for taking over and handing over. Whilst handing over, he is required only to give oral information to his reliever and all such information is readily available to him. He has to give information on such topics as the number of trains on reception lines, occupation of other lines and lines which are mixed-up or mis-marshalled. According to Swaminathan, the above information is jotted down on a piece of paper by the relieved Shunting Jamadar and all that the latter does is to hand over that piece of paper to his reliever. I am not convinced that exchange of such information can take 15 minutes or more.

(viii) *Cabinmen*.—As regards Cabinmen, the case of the Federation is that, before taking charge, a Cabinman has to see that all control points and levers are in proper working order. Gurlal Singh's evidence is that none of the job analyses with which he was associated had ever revealed, nor had he himself noticed, that any Cabinman has to take half an hour before rostered time or that any Cabinman was required to inspect control points before assuming charge. I agree with the submission of Mr. Mahadevan that, if any testing is done at all by an incoming Cabinman, he will not be necessarily testing all levers or control points, but he will test only a few of them by way of samples. I am not convinced from the evidence that the time taken for handing over and/or taking over by a Cabinman is 15 minutes or more.

Demands for changes in Periodic rest and ratio of Rest-givers

6.190. One of the demands of the Federation relates to weekly period of rest. The demand is

based on Geneva Convention No. 14 of 1921. This Convention has been ratified by Government of India. According to Mr. Kulkarni, it has also been honoured by being translated into national legislation. According to the Convention, every worker should have one day in a week as a rest day. The Federation's demand is based on a certain interpretation of this provision. According to Mr. Kulkarni, this provision means that no worker should be called upon to work for all 7 days in a week; that a worker should work only for 6 days in a week and that the 7th day must be a weekly rest day. Mr. Kulkarni further contends that the above Convention and Washington Convention must be read together to obtain a true picture of the international thinking on weekly rest. According to Mr. Kulkarni, the true meaning of Washington Convention is that every eight hours' daily work must be followed by a daily rest of 16 hours; that weekly 48 hours should be distributed amongst 6 days of a week and that the 7th day must necessarily be an off day. Therefore, contends Mr. Kulkarni, that the provisions of the two Conventions read together yield the result that, besides weekly rest of a full calendar day, a worker must get 16 hours of rest preceding weekly rest day, so that, in order that the two Conventions may be fully implemented, it is necessary that a worker should have a rest of 40 hours between the termination of his work on the 6th day of a week and the commencement of his work on the first day of the ensuing week. Therefore, according to Mr. Kulkarni, till the commencement of the first day of the next *i.e.* succeeding week, a worker cannot be said to have full day's weekly rest unless and until he has a total rest period of 40 hours between the end of a day's work and the termination of weekly rest period. It is the validity of this demand which falls to be considered in this Reference.

6.191. Another demand of the Federation is that the ratio between rest-givers and railway employees must be 1:6 and that the ratio of 1:9 at present being maintained in regard to some categories of railway servants is improper and inadequate. From pleadings, it appears that originally this demand was an independent demand. However, at the time of arguments, it emerged that this is not so. Instead, the demand of ratio of 1:6 turns out to be a consequential demand arising from the demand in regard to weekly rest. Mr. Kulkarni contends that his demand for a total period of 40 hours' rest from the termination of the work of the last day of a week to the termination of weekly rest can be implemented only if the ratio of rest-givers and railway employees is 1:6. In view of this contention, it is obvious that this consequential demand is dependent upon the validity of the main demand that 24 hours' weekly rest must follow daily rest of 16 hours. Therefore, it will be convenient to consider the above two demands together.

6.192. The existing provisions regarding weekly rest in HER are mainly based upon the Adjudicator's recommendations on the subject. The Adjudicator considers the problem of weekly rest category-wise. In paragraph 195, at page 62 of his Report, Vol. I, he considers the problem in regard to Continuous workers. In paragraph 218 at page 70, he

does so in regard to Intensive workers. In paragraph 237, at page 75, he discusses the problem in regard to Essentially Intermittent workers. In paragraph 253 at page 80, he considers the problem in regard to the inferior staff classified as Excluded. The Adjudicator observes that, on railways, only Continuous workers were then entitled to weekly rest of 24 hours and that no other class of workers was being given weekly rest. He notices that though this is so, only Continuous workers in non-continuous processes get rest of a calendar day and two nights and that Continuous workers in continuous processes do not get rest for such a period. He observes that this difference arises because no rest-givers are employed on railways. He notices that the absence of a provision for rest-givers results in awkward long-ons and short-offs for Continuous workers in continuous processes. The Adjudicator then refers to a letter, dated 9th February 1946, of Railway Board in which it was observed that railway workers should be allowed a calendar day's rest through the employment of rest-givers. Thereafter, the Adjudicator points out that this letter is ambiguous. He says that the expression "calendar day" may mean a rest of midnight to midnight of a day and that, if this is what is intended, workers will not be able to get rest for a full night and for a full day. The Adjudicator observes that such is not the intention of Railway Board and that, what the letter intends to give is daily rest available to a worker at the end of a day's work plus a full calendar day's rest. After so observing, the Adjudicator proceeds to make his own recommendation. His recommendation is a diluted version of that which he attributes to the Railway Board. According to him, weekly rest must include a full night's and a full day's rest. Obviously, he does so without taking into consideration daily rest available to a worker at the end of a day's work. The Adjudicator then recommends a rest of 30 hours for Continuous workers by way of weekly rest through the employment of rest-givers, observing that such a provision will give the workers a full night's and a full day's rest. He winds up the discussion on the subject by observing that his recommendation will facilitate change of shifts and avoid long-ons and short-offs which vitiate the existing provision relating to weekly rest in regard to Continuous workers engaged in continuous processes. The Adjudicator makes a special recommendation in cases of Mates, Keymen, Gangmen, Artisans and unskilled labour employed for temporary purposes, *i.e.* a calendar day's rest each week or, at the discretion of railway administration, an equivalent number of consecutive number of days upto the limit of three in a month. He does so on the ground that experience shows that such alternative arrangement is sometimes preferred by the above types of employees as it enables them to visit their homes. The Adjudicator, in paragraph 218 at page 70, also recommends a rest of 30 consecutive hours for Intensive workers for the same reasons for which he recommends such rest for Continuous workers. However, he does not suggest employment of rest-givers for giving rest to Intensive workers. As regards EI workers, the Adjudicator suggests a weekly rest of 24 consecutive hours including a full night also through employment of rest-givers. He

makes this recommendation on the basis of the evidence before him and the letter of Railway Board, dated 9-2-1946, referred to above. He does not recommend rest of a full day for EI workers on the ground that a majority of them are employed at wayside stations. As regards inferior staff in the Excluded category, whilst observing that no relief from work is necessary because work which such staff does is light, periodic rest must be given to such staff on grounds of equity and to meet their domestic and social needs. Ultimately, the Adjudicator recommends for such inferior staff a periodic rest of 24 consecutive hours in a fortnight or, in the alternative, a similar rest of 48 hours in a month.

6.193. The existing legal frame-work regarding weekly rest is to be found in section 71-D of the Act and in rules 6, 8 and 9 of the Rules made by Central Government. For the purpose of periodic rest, HER retain the same classification which they have evolved for other purposes, the classification being Continuous, Intensive, Essentially Intermittent and Excluded. The provision that they make for Intensive, Essentially Intermittent and inferior Excluded workers is the same which the Adjudicator recommends. However, they divide Continuous workers into two sub-categories consisting of (1) Loco and Traffic Running staff and other staff on duty in running trains, and (2) Continuous workers other than those included in sub-category (1). In regard to the first sub-category, HER provide for, at least, four periods of rest every month of 30 consecutive hours or, at least, five periods of rest every month of 22 consecutive hours including a full night. They further provide that such periodic rest should be given to such staff at headquarters and should always include a night in bed and that such rest should be given as far as possible once in every ten days. Section 71-D (3) empowers Central Government to specify railway servants to whom periods of rest may be granted on a scale less than that prescribed by the Statute for railway workers and to prescribe periods of rest which should be granted to them. Section 71-D (4) empowers the prescribed authority to make temporary exemptions from the provision relating to weekly rest on grounds mentioned in subsection (4) of section 71-C in case of all railway servants except Loco and Traffic running staff and other staff on duty in running trains and staff in regard to which Central Government has exercised the power under section 71-D(3). The prescribed authority has been designated in rule 6 as the Head of a railway administration or his delegate. Rule 9 puts an upper limit in regard to such exemptions, enjoining that no such exempted servant, shall be required to work for more than 14 days without a period of rest of at least 30 consecutive hours if Continuous or Intensive, or at least 24 consecutive hours including a full night if EI. Subsidiary Instruction 14(iii) further provides that such compensatory rest must be granted within a month and from the date on which periodic rest is withheld. The effect of this provision is that in regard to the above categories of railway servants, two consecutive periods of periodic rest cannot be withheld. Though the Statute does not put any upper limit in regard to Excluded staff, Subsidiary Instruction No. 14 (iii) enjoins that periodic rest

must be given to such staff within two months from the date it is withheld. Subsidiary Instruction No. 14(i) provides that periodic rest should normally be given through employment of rest-givers. It says that this is to be done "so as not to cause any hardship of an inconvenient long-on or short-off". As regards the Excluded class IV staff, that Instruction in a Note thereunder says that rest to such staff will be given by deputing other staff to attend to their duties.

6.194. It will be noticed from the above legal framework that though HER provide for weekly rest for most staff, they do not do so for all staff and that they provide for monthly rest for running staff and either monthly or fortnightly rest for Excluded class IV staff. They also give power to Central Government to prescribe lesser hours of weekly rest in regard to certain categories and confer power on the prescribed authority to grant temporary exemptions on certain grounds. It will be noticed that the demand of the Federation does not challenge the power of Central Government to prescribe lesser hours of periodic rest or the power conferred on the prescribed authority to grant temporary exemption, nor does it challenge the statutory provision making exception in the case of running staff and Excluded class IV staff. As already noticed, Convention No. 14 permits such exceptions to be made. The challenge is based only on the broad submission that the general provision in Convention No. 14 provides for a total rest period of 40 hours comprising of 16 hours of daily rest and 24 hours of weekly rest.

6.195. In the course of arguments, both national and international legislation on the subject were referred to by both sides. The Factories Act, 1948, prescribes that the first whole day of a week shall be a holiday. It confers power on the Government to grant exemption from this provision in regard to certain types of industries. The Plantations Labour Act, 1951, enjoins on State Governments to provide for a day of rest in every period of seven days. The Mines Act, 1952, provides that no person shall be allowed to work for more than six days in a week. The minimum Wages Act, 1948, says that the appropriate Government may provide for a day of rest in every period of 7 days. The Motor Transport Workers Act, 1961, also provides for a day of rest in every period of 7 days. The U.P. Shop Establishment Act, 1962, says that every employer shall keep his shop or commercial establishment closed on one day in a week. Table XIV at pages 96 to 99 and the Notes on that Table at pages 100 to 101 of the Report of the Inland Transport Committee, 1961, give information on the subject of weekly or periodic rest on foreign railways. Except one or two railways, all foreign railways prescribe a minimum of one day per week as periodic rest. The Table also gives information in regard to the length of weekly rest. The normal length on 8 railways is 24 hours. It is 32 on 2 railways and varies from 36 to 39 hours on others. In regard to French railways, comprised in the latter group, the total length is 24 hours for non-travelling staff and 38 hours for travelling staff. In regard to Netherland railways, also comprised in the latter group, the total length varies from 30 to

36 hours for persons working in shift system and for those not working in such a system, such length is a fixed period of 36 hours. The only country which prescribes the maximum length for periodic rest is U.S.S.R. and the length prescribed is 39 hours.

6.196. From the above provisions in national and international legislation, it is quite clear that, except in a few cases, no fixed day is prescribed as the weekly day of rest and that, where such is the case, power has been given to the concerned authorities to grant exemptions. It is obvious that a fixed and uniform day of rest cannot be an appropriate provision for continuous industries or industries working in shifts. It is also obvious that neither Convention No. 14 nor any of the above pieces of legislation, national and international, prescribes a total of 40 hours' rest in the sense contended for by Mr. Kulkarni. On the contrary, there are indications that such is not the case in a large number of countries, as is clear from the information collected in Table XIV aforesaid. Mr. Kulkarni concedes that the interpretation of Convention No. 14 which he contends for is not free from doubt. He concedes that the provision therein is capable of being read as 24 hours from the close of the work on the day preceding rest day or from the end of daily rest. However, he submits that, if the former interpretation is accepted, then, weekly rest will mean 16 hours of daily rest plus 8 hours more, thereby giving workers only 8 hours' weekly rest, whereas, according to the second interpretation, workers will have a full calendar day's rest plus 16 hours' daily rest which, according to him, Washington Convention entitles them to. According to Mr. Kulkarni, if the former interpretation is accepted, it will mean that weekly rest will eat up the whole of daily rest and, in effect, workers will get a weekly rest of 8 hours only. He further contends that Washington Convention and Convention No. 14 must be read together and the effect of the two Conventions is that, at the end of every day's work, workers must have rest of 16 hours and that, on the seventh day, they must have a full calendar day's rest. Mr. Kulkarni contends that if such were not the interpretation, then, workers can be called upon to precede on periodic rest from the end of their shift and will be given rest of 8 hours only.

6.197. Mr. Kulkarni derives support for the above interpretation from purposes mentioned by the Adjudicator for which weekly rest is given. According to the Adjudicator, weekly rest is given to afford to a worker weekly relief from work and to enable him to attend to his social and domestic needs. According to him, therefore, a full night's rest and a full day's rest are necessary to relieve a worker from his weekly work and to enable him to attend to his social and domestic needs. Mr. Kulkarni also relies upon the interpretation which the Adjudicator puts upon the letter of Railway Board dated 9-2-1946 by which he construes the expression "calendar day" used in the letter as meaning a calendar day's rest in addition to daily rest.

6.198. I have given my anxious consideration to all that Mr. Kulkarni has to say in support of the

above demand. There is no doubt that, when an industry works in one shift only, a worker, as observed by the Adjudicator, will have both his daily rest as well as a full calendar day's rest and this will give him a total rest of 40 hours. Even in regard to an industry engaged in more than one shift, a worker will have the same amount of periodic rest if his shifts are not changed. However, complications arise, that is, the total period *i.e.* periodic rest gets reduced, if, in the course of succeeding week, shifts are changed. The question for consideration is whether, if and when such changes take place, the authors of Convention No. 14 intended that, in addition to full calendar day's periodic rest, the concerned worker should also be given his full daily rest. It is quite obvious that, if the employer were to be called upon to do so, then, he may find it difficult to change shifts. Such a result can be achieved only either by foregoing change of shifts or by employment of rest-givers on an uneconomic scale. In the first case, an employee working in night shift will be tied to that shift for ever. It is true that, if the above interpretation is inevitable, then, none of the above difficulties or hardships should deter one from giving effect to the true construction. However, I am not convinced that the interpretation sought for by the Federation is necessary and inevitable. In my opinion, the two Conventions have totally different purposes to achieve. Therefore, it is not correct to read them together. Nor are the objects of the two Conventions such that they must necessarily be read in such a way as not to impinge upon the provisions of each other. The purpose of Washington Convention is simply to provide for maximum hours of daily work. It is not intended to secure a daily rest of 16 hours for a worker after a day's work. The object is rather to secure that work for more than a certain number of hours is not exacted from him on any day. The Convention secures that a worker does not or is not allowed to work, for various reasons, more than 8 hours a day. It is not based on the ground that a worker needs 16 hour's rest after every period of 8 hour's work. Convention No. 14 is based on the notion that a worker needs a rest of 24 hours in a week. Under the circumstances, in my opinion, the two Conventions have different objectives and do not require necessarily to be read together for implementing them. It is true that, under the second construction, rest of 24 hours may be counted from the closure of day's work and, in that case, an employee will get in effect only 8 hours' periodic rest. But, in my opinion, such a situation is well-taken care of by the provision contained in all industrial legislation and rules relating to short-offs. HER prescribe a period of less than 10 hours' rest as the period of short-off for Continuous workers. It is, therefore, clear that a Continuous worker cannot be called upon to work on a succeeding day unless ten hours at least elapse from the closure of his day's work. Similar provision relating to short-off protects EI workers for whom 24 hours' periodic rest including a full night is prescribed. As regards those workers for whom a periodic rest of 30 consecutive hours is prescribed, there is no danger whatsoever of any such hardship arising as Mr. Kulkarni contends against. It is quite clear that such a provision, in effect, gives a worker a full

night's rest comprising 8 hours plus 22 hours, quite a major part of which will be during day. Therefore, I agree with the contention of Mr. Mahadevan that the provisions contained in HER relating to periodic or weekly rest are more liberal than those contemplated by Convention No. 14; that they are more or less the same as are prevailing in a majority of foreign countries referred to in Table XIV and that they are in conformity with national legislation on the subject. In this connection, it is important to notice that, even where legislation prescribes a full calendar day's periodic rest, power has been reserved to appropriate Government or authority to exempt continuous industries from that provision. In my opinion, railways being essentially a continuous industry and quite a significant number of workers engaged therein being employed in more than one shift, the present provisions are not only appropriate but they are sound and do not require any change except in the case of class IV Excluded workers who, in my opinion, for reasons already given, require to be put on a par with EI workers in the matter of periodic rest too, which exception is conceded by Mr. Mahadevan and, therefore, which exception does not require any further elaboration.

6.199. Moreover, it is obvious that curtailment of daily rest feared by Mr. Kulkarni does not stem from an improper application of either Washington Convention or Convention No. 14. It stems from the fact that industries which are engaged in more than one shift have to change workers from one shift to another. Such a change of shifts is primarily made with a view to seeing that the same set of workers are not engaged continuously in night duty. There is no provision in any Convention or any legislation that an employer cannot change shifts of work. On the contrary, there is provision to the effect that such a change is desirable to avoid continual night duty by sets of workers. Therefore, if an employer changes shifts of workers, he does not violate any principle of International Convention or national law or practice. It is true that, if a worker is called upon to change his shift at any time, then, his daily rest may be curtailed to nil or 8 or 16 hours. In the first two cases, some hardship is bound to be caused to the concerned worker, but, the question for consideration is whether the hardship is of such an order that a rule requires to be framed that a shift should not change in the above fashion. In my opinion, any hardship involved in the change of such a shift is well-provided for by rules relating to long-ons and short-offs and, so long as these rules are not violated, there is no reason to circumscribe the present law on the subject of periodic rest.

6.200. For the above reasons, the present provisions relating to periodic rest to do not require any change except that class IV Excluded workers should be put on a par with the EIs in the matter of periodic or weekly rest.

6.201. In view of my above conclusion, it follows that the contention of Mr. Kulkarni for provision of rest-givers in the ratio of 1:6 must be rejected. It is for the administration to decide what ratio it should

maintain for the implementation of provisions relating to periodic rest. So long as an administration conforms to rules relating to periodic rest, it is not for employees to dictate as to what should be the proportion of rest-givers. So long as an administration is able to give periodic rest to its workers as prescribed by HER and the ratio actually fixed does not interfere with such periodic rest, it is for the administration to decide as to whether the ratio of rest-givers should be 1:6 or 1:9.

Specimen rosters

6.202. That brings me to an examination of rosters prevailing on Northern and Western Railways and consideration of the objections raised by Mr. Kulkarni in regard thereto. I may mention that, in view of my finding that railways should be governed by the rule of 8 hours a day and 48 hours a week, the present rosters will have to be changed so as to bring them in line with the rule. However, in view of the general nature of objections raised by Mr. Kulkarni, I propose to make a few observations in regard to the above rosters as they exist today.

6.203. Rosters of Northern Railway which came in for criticisms were specimen rosters Nos. I to IV and Nos. VIII and IX, printed at pages 51 to 54 and pages 58 and 59 respectively of Northern Railway HER Manual. Specimen roster No. I is framed for Continuous workers who have to work in three shifts at three different stations. It prescribes hours of work for three groups of workers, each group of three workers, and a rest-giver. The ratio of rest-giver to workers is 1:9. Though each worker gets a weekly rest of 32 or 33 consecutive hours including a full night, and though there are no long-ons or short-offs, this roster admittedly suffers from the following flaws : (1) each worker has to work every third week for all seven days in a week; (2) in case of groups A and B, each worker has to work for 55 hours in every third week; (3) in some cases, weekly rest is spread over two weeks instead of one; (4) workers in group C, while picking up duty of group B, have 30 hours of periodic rest but such rest does not commence from a Sunday. Flaws Nos. (3) and (4) are the most serious because they violate the Statute. Mr. Mahadevan readily acknowledges the above infirmities and states that steps will be taken to scrap the above rosters and to adopt corresponding rosters types A to H prevailing on Western Railway, which rosters are free from the above infirmities. Specimen roster No. II, printed at page 52 of the same Manual, is designed for Continuous workers who have to work at one and the same station. It is meant for a group of nine workers and provides for rest-givers in the ratio of 1:9. Though, in this roster, weekly rest of 34, 32 or 30 consecutive hours, including a full night in bed, is provided and though there are no long-ons or short-offs, this roster also suffers from the same infirmities from which specimen roster No. I suffers and, for the reasons already given, Mr. Mahadevan promises to get this specimen roster on Northern Railway also scrapped and to get a new roster on the lines provided by Western Railway introduced. Specimen roster No. III,

printed at page 53, is designed for Continuous workers engaged in shifts throughout 24 hours. It is meant to cater for workers engaged at two different stations. It is framed for a three-weekly cycle and provides overlapping of half an hour in each shift to include time for taking and handing over. Rest-givers are provided in the ratio of 1:6. The infirmities pointed out by Mr. Kulkarni are that (1) though the worker in group A gets weekly rest of 39½ hours, he does not get such rest in one and the same week commencing from Sunday, and (2), in the week commencing from Sunday, the worker gets rest of 24 hours only. Therefore, this roster also violates the Statute which requires 30 hours' rest to be given to a Continuous worker every week, commencing from Sunday. However, Mr. Kulkarni contends that, if the above defects in roster No. III are eliminated, it will be an ideal roster for Continuous workers who have to do overlapping duty. Mr. Kulkarni, however, concedes that workers on roster No. III will have to put in work for additional three hours every day and some workers will have to work overtime, thus making overtime a regular feature. But, Mr. Kulkarni contends, on the basis of the case of *Karamchand Thapar*, reported in LLJ 1964 Vol. I page 432 at page 435 that there is nothing wrong if overtime becomes a regular feature. Specimen roster No. IV, printed on page 54 of HER Manual, is also designed for Continuous workers employed in sheds, each of whom is assigned a duty of 48 hours in a week. Mr. Kulkarni points out that, in this roster, the worker in group F does not get weekly rest as provided by the Statute inasmuch as his rest of 32 hours is spread over Saturdays and Sundays. Mr. Kulkarni contends that, if this defect is removed, then, this will be an ideal roster for all Continuous workers where no handing over or taking over is involved or where no overlapping rosters have to be prepared. Mr. Mahadevan recognises the above defect also. He states that steps will be taken to correct the error and to bring the roster in conformity with the Statute. For reasons given in paragraph 6.205, I do not propose to express any opinion on the views expressed by Mr. Kulkarni for adopting specimen rosters Nos. III and IV for Continuous workers who have to put in 48 or 54 hours a week. Specimen roster No. VIII, printed at page 58 of the above Manual, is designed for Intensive workers, that is workers whose employment justifies four shifts in 24 hours. It is designed to provide for four workers in a four-weekly cycle. This roster provides for 42 hours' work in a week, weekly rest of 36 or 30 hours covering a full day and a full night and has no long-ons. However, daily rest on some days is reduced to 12 hours. The roster changes duty hours and rest period in one and the same week. Specimen roster No. IX is also designed for Intensive workers. Weekly rest provided therein is 36 consecutive hours and, in addition, employees get rest of 36 consecutive hours once in every four weeks. In this roster also, though there is no long-on, daily rest on some days is reduced to 12 hours and duty hours and rest periods change in one and the same week. Rosters Nos. VIII and IX do not provide for any rest-givers. They are so designed that provision of rest-givers is not necessary at all. Mr. Kulkarni's main objection against the above two rosters is based on the ground of

absence of any provision for rest-givers. I do not think I can sustain this objection. So long as workers are not called upon to work for a period exceeding 42 hours a week, so long as they are provided with weekly rest of 30 hours and so long as there are no long-ons or short-offs, I am not convinced that the Statute or HER require that duty hours of workers and rest periods should not change in one and the same week, provided the net result is that a worker is not called upon to work for more than ceiling hours on the average in two weeks commencing from Sunday and gets his periodic rest each week commencing from Sunday. In my opinion, Mr. Mahadevan is right in contending that, if rest-givers are provided also in rosters of the above type, the result will be that an Intensive worker will be called upon to work for 42 hours in 6 days instead of 7 days as contemplated by HER.

6.204. Specimen rosters A to H (A), framed by Western Railway and printed on pages 90 to 98 of its HER Manual, are meant for Continuous workers. They provide for rest-givers in the ratio of 1:9. Mr. Kulkarni admits that none of these rosters suffers from any of the infirmities which the above-mentioned rosters of Northern Railway suffer from, but, he submits the following points against specimen rosters C to H (A). He contends that hours of duty of rest-givers in those rosters change four times in a week in roster H and three times in other rosters. As regards specimen roster A, printed at page 99 of the Manual, which is meant for Continuous workers in continuous process, and specimen roster P, printed on page 106 of the Manual, which is meant for Continuous workers in non-continuous process and which rosters provide for rest-givers in the ratio of 1:6. Mr. Kulkarni contends that, in roster P, rest-givers' hours of duty change three times in a week and that, in both rosters, there are short-offs on Sundays, Tuesdays, Thursdays and Fridays. I am not in agreement with Mr. Kulkarni's submission that rosters must be held to be defective because hours of duty of rest-givers change a number of times in a week. I agree that rest-givers must be given the same conditions regarding weekly ceilings of work and weekly rest as all other workers. However, in my opinion, so long as a roster complies with the above two conditions and does not suffer from long-ons or short-offs, an objection cannot be sustained on the ground that hours of duty of rest-givers or other workers change more than once in one and the same week. In my opinion, there is no statutory or any other bar on the latter subject. No arguments are adduced by Mr. Kulkarni to justify the view that the provision for change in hours of duty in one and the same week is bad. Such a provision does not appear to violate any principle nor is it likely to affect health, efficiency or endurance of workers. As regards specimen roster S, printed on page 109 of the same Manual, which is meant for EI workers, employed in shifts for 24 hours, with provision of rest-givers in the proportion of 1:6, Mr. Kulkarni contends that the rest-giver in this type of roster does not get a weekly rest of 24 hours and that, this being against the Statute, that roster requires to be scrapped or revised. However, Mr. Kulkarni is not right in this contention. He appears to have

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misunderstood the roster. The rest-giver in this roster does get weekly rest of 24 hours. He will not get rest only if the EI worker has to perform also preparatory and/or complementary duties. If such is the case, Mr. Kulkarni's contention may be justified. As regards specimen roster W, printed on page 113 of the Manual, which is also meant for EI workers, employed in shifts for 24 hours, with rest-givers in the proportion of 1:6, Mr. Kulkarni contends that this roster offends HER inasmuch as the rest-giver therein is engaged continuously in night shifts and, consequently, does not get a full night in bed on any working day of the week. This roster can offend HER only if the concerned employee holding the post of a rest-giver is employed on that post continuously for one or two years [Vide Subsidiary Instruction No. 11(ii)]. As regards specimen rosters T, U and V, printed on pages 110 to 112, which are also meant for EI workers with rest-givers in the ratio of 1:6, Mr. Kulkarni contends that rest-givers therein have to wait to take or hand over charges. This objection is not valid in view of my finding that working hours of a worker may get extended, subject to a maximum, for doing preparatory and/or complementary work.

6.205. Preparation of rosters is a complicated operation and, therefore, it is not advisable, for an adjudicator, to frame rosters, as rosters so framed are bound to be rigid and inflexible. The task must be left to the concerned administrations. The utmost that an adjudicator can do is to lay down principles which administrations must respect and which must not be violated whilst framing rosters. If an administration can frame a roster, which does not violate any such principle, no objection can be permitted on an extraneous ground or on such academic considerations as that rest-givers must, in all cases, be provided or that they must be provided in the ratio of 1:6. In view of the materials placed before me, these principles may be stated as follows : (1) no roster should offend the principle of hours of work prescribed for the concerned workers. Thus, for Continuous workers, who are not required to perform any preparatory and or complementary work, rosters should be prepared on the basis of 48 hours a week on the average in two weeks and, for those who have to do such work, rosters should be prepared on the same basis plus the number of additional hours which the concerned workers are required to put in for preparatory and/or complementary work. Rosters of Intensive and EI workers should be framed in the same way in conformity with the two-weekly and weekly average number of hours prescribed for them by HER; (2) no roster should be framed which offends rules against long-ons and short-offs; (3) every roster must provide periodic rest as determined by HER for the concerned worker. Weekly rest must be given in the week commencing from Sunday midnight and ending with Saturday midnight, i.e. weekly rest must not be spread over two weeks. However, except where a worker is engaged in a single shift, this weekly rest need not be given on a fixed day but, in changing weekly rest day, care must be taken to see that the principles against long-ons and short-offs are not violated; (4) rosters should be framed, as far as possible so as to avoid

overtime work as a regular feature; (5) rosters of rest-givers must be so framed as to comply with principles on which rosters of other workers are framed.

Certain split rosters

6.206. My attention is drawn to Rule 87(b) of HER of Northern Railway, which rule is printed at page 26 of that railway's Manual. Rule 33(v) of that Manual prescribes that, as far as possible, spread-over in a split shift shall be limited to 16 hours provided that rest between 10 P.M. and 6 A.M. is not broken and, that if such rest is broken, spread-over should be limited to 14 hours. Rule 87(b), however, permits rosters to be fixed at a sliding scale if rest between 10 P.M. and 6 A.M. is broken, so that the total spread-over can be any thing beyond 14½ upto 16 hours. This rule 87(b) permits authorities to prepare such rosters. The rule justifies preparation of such rosters on the ground that, otherwise, there will be wastage of manpower since additional staff will have to be sanctioned for the intervening period. During the course of evidence, a question was raised as to whether the above sub-rule (b) of rule 87 does not violate that which is prescribed in rule 33(v). I agree with the view of the Board that rule 87(b) does not violate rule 33(v). This is so because rule 33(v) is not mandatory but directory. It says that the prescription in 33(v) should be observed in practice "as far as possible" and further says that the principle enunciated therein should "invariably" be followed. Though this is so, I agree with the contention of the Federation that, even if rule 87(b) does not violate the letter of rule 33(v), it does violate its spirit and that, therefore, it should be abrogated. The basic principle underlying the prescription in rule 33(v), is that service for a total period beyond 14 hours, involving night duty, *prima facie* is beyond human endurance. Therefore, the prescription that total spread-over should not exceed 14 hours when night duty is involved is sound and should be strictly adhered to. Therefore, I decide that, rule 33(v) should be amended so as to make it mandatory and rule 87(b) should be deleted altogether.

Financial implications

6.207. Railway Board resists the demands of the Federation under Term of Reference No. 5 on financial grounds also. The Board's objections are as follows : (1) reduction of hours of duty is incompatible with economic situation prevailing in the country; (2) railways are running into losses since 1966-67; (3) reduction of working hours will affect railway finances adversely, and (4) wage bill of the employees is rising on account of (i) merger of dearness allowance with pay; (ii) interim reliefs already granted by Third Pay Commission, (iii) prospect of that Commission making an upward revision in pay structure, and (iv) grant of minor concessions by appropriate authorities.

6.208. In order to appreciate the Board's objections on financial grounds, it is necessary to mention a few facts which are relevant on the subject. Indian

Railways are wholly owned by the Union of India. According to the view, propounded by the Constituent Assembly (Legislative), Indian tax-payer has the status of a sole shareholder on Indian Railways. Though primarily Indian railways are public commercial and public industrial undertakings, they are run somewhat differently from other public undertakings and even from private undertakings. They are not registered under the Indian Companies Act. No meetings are held for passing their accounts. Unlike many public undertakings, Indian railways are run as a department of Central Government. A railway budget is prepared, presented and passed by Parliament every year. Thus, Indian railways are a part of Government of India. Because of this peculiar status of Indian Railways, Railway Development Plan is not an independent Plan. Such a Plan is a part of the General Plan for the whole country, the policy in regard to which is determined primarily by Planning Commission. The targets for the Plan are fixed by that Commission. All assets of railways are owned by Union of India. Their investment policy is decided as part of the overall investment plan of Central Government. Such policy is decided by an assessment of transportation needs of the country as envisaged by various Government agencies and accepted by Planning Commission. The result is that old assets, though unremunerative, are replaced and new unremunerative assets are being created. These new assets may be required to cater to staff amenities, traffic requirements and/or passenger amenities. Unremunerative lines or new lines which are likely to take a long time to become remunerative, are opened up and unremunerative sections, though identified, are not closed on national or even political grounds. Railways being a part of Central Government, the relationship between railway finance and general finance is governed by conventions. Parliament appoints from time to time a Convention Committee from among its members which recommends to it measures which, in its opinion, are necessary to be undertaken to regulate railway finances and working. Though railways are a part of Government, they are run as commercial organisations too. Generally, their operations are done and their accounts are kept and maintained on commercial principles. However, profit and loss accounts of different zones are maintained mainly for administrative purposes and financial control only. Broadly speaking, railways are not run for earning profits solely. Railway expenditure falls mainly under two heads : (1) revenue expenditure, and (2) expenditure on works. Revenue expenditure includes (a) expenditure on day-to-day running of railways, (b) appropriation to Depreciation Reserve Fund, (c) appropriation to Pension Fund, (d) payment of dividend to Government on its investments and loans, and (e) expenditure on certain small works which are charged in one and the same year of account. Expenditure on works falls under three categories: (i) expenditure required for remunerative works and for new lines, (ii) expenditure required for replacements and renewals of existing assets, and (iii) expenditure required for essential but unremunerative works. Expenditure under category (ii) above is charged to Depreciation Reserve Fund. Expenditure under category (iii) is charged to a fund known as Development Fund and

expenditure under category (i) is charged to Capital Account. Development Fund, though named as such in 1950-51, was actually created in 1946-47. This Fund is designed to relieve capital-at-charge relating to works of its liabilities in respect of provision of such items as (A) passenger amenities, (B) staff amenities and (C) expenditure on unremunerative operative improvement works costing more than rupees three lac each. In addition to Development Fund, railways have to make contributions to two more civil funds. One is Railway Provident Fund. This Fund is comprised of subscriptions made by railway servants and equal contributions made by railways. The other is Pension Fund, created recently in 1964-65, contributions to which are made by railways. This Fund is created to enable railways to honour pension and death-cum-retirement gratuity obligations towards their servants. Provident Fund is utilised to pay amounts due to at the time of retirement to railway servants recruited before 16th November, 1957 who have not opted for pension scheme. All these funds are banked by railways with Central Government. Funds required for Capital Accounts are obtained from the Ministry of Finance, but, Depreciation Reserve and Development Funds are being fed from railway revenues. Expenditure on works is being paid from these funds. Revenue expenditure is being met from earnings of each year. Capital Investments on railways have increased rapidly in recent years. Total railway assets have increased from Rs. 15209 million in 1960-61 to Rs. 31955 million in 1969-70. Though railways are run on commercial principles and their income and expenditure policies are determined primarily on the same principles on which such policies of industrial and commercial establishments are determined, because of their above special features and their public utility character, railways are subjected to a number of constraints, as a result of which their finances become affected in more than one direction. Railways have to bear these constraint and undergo consequent financial hardships. These constraints are imposed in national interest. Some of these constraints are statutory. Statutory constraints are to be found in sections 27-A and 28 of the Act. Under section 27-A railways are obliged to honour directions given by Central Government, not only in regard to goods carried for Central and State Governments, but, also in regard to all goods or classes of goods in general. Central Government has also power to determine freight rates in regard to all goods or classes of goods. In pursuance of this power, Central Government has given preferential treatment in regard to rates of a number of commodities such as coal, mineral ores, manure, food-grains, raw materials for industries, etc. Section 28 prohibits railways from granting preferences on their own to their customers. Some other constraints arise out of control exercised by Parliament over railway finances. Parliament controls railway policies in regard to goods freight and/or passenger fares. Some constraints are imposed for special, economic and even strategical reasons. Thus, railways have to find funds for replacements of assets or works which, though unremunerative, are considered by the concerned authorities as necessary or essential to be maintained in the interests of public safety and/or

social welfare. Freight rate of coal is kept low, though it is transported in large quantities and over large areas. This is so done because, coal is considered to be an essential commodity for industries and it is felt that, if freight therefor is heavy, cost of industrial production will be high. In some cases, freight rate on coal is kept low so that industrial concerns situated far away from pit-heads may not have to withstand an unequal competition from similar concerns situated at or near pit-heads. According to K. S. Gupta, freight charged for transport of coal beyond 1000 kilometres is less than cost of its haulage to railways. Coal is considered to be a commodity with low intrinsic cost at pit-head, but, if economic freight has to be charged for its haulage, the consequent increase in the cost of coal will be disproportionate to its cost at pit-head. Specially low freights are also fixed for mineral ores and other commodities meant for export. This is done to boost exports. Similarly, uneconomic freights are charged for transport of foodgrains, pulses, fodder and oil-cakes. Passenger fares are also kept low, not only for social and economic but even for political reasons. Proposals for increases in passenger fares had to be dropped in 1970 because of severe opposition in Parliament. Passenger fares for commuters in suburban trains are kept specially low at old Presidency towns for historical and special reasons. It is said that fares ranging from 11 to 14 single journeys only are charged for such commuters for 50 single journeys. There is no doubt that rates charged to such commuters are highly unremunerative. All these factors contribute to the weak financial position of railways. Another feature of railway finance is that railways are required to pay dividend on capital-at-charge at a fixed percentage recommended by Convention Committees from time to time and approved by Parliament. It is not necessary to trace the history, which dates from 1924, on this topic. The latest position from information available on record is that railways have to pay dividend at the rate of 4.5 per cent on capital-at-charge invested upto 31st March, 1964 and, at the rate of 6 per cent, on capital-at-charge invested after that date. In addition to this, railways are required to pay at the rate of 1 per cent more on capital-at-charge invested upto 31st March, 1964 in lieu of passenger fare tax which was abolished from 1st April 1961. The above dividend is to be paid every year, not only on capital-at-charge invested on remunerative lines but also on capital invested on unremunerative lines. Such dividend is to be paid not from the time a line becomes profitable but from the time it starts. However, to soften the rigour of the above provisions, some measures have been adopted, as appears from the evidence of K. S. Gupta, by Parliament. These measures are (1) that, on strategic lines, no dividend need be paid, (2) that annual loss on such lines should be borne by General Revenues, (3) that, if working of such lines should leave a surplus, it should be transferred to General Revenues upto the level of normal dividend, (4) that rate of dividend on capital-at-charge invested on North East Frontier Railway should be at average borrowing rate and not at dividend rate, (5) that deferred dividend on new lines should be written off after a period of 20 years from the date of opening of such lines, and (6) that rate of dividend

in respect of portions over-capitalised should be reduced to average borrowing rate. Railway Convention Committee, 1971, in its interim report to Parliament, makes a significant recommendation which may be noted also. This recommendation is that capital-at-charge invested on (1) non-strategic lines on North East Frontier Railway, (2) unremunerative branches, and (3) element of over-capitalised capital, should be exempted from payment of dividend. The Convention Committee accepts a recommendation made in the Study Team of the Administrative Reforms Commission's Report in regard to doubling of lines, conversion of gauges and projects requiring long gestation periods but, in diluted forms. The Committee recommends that 25 per cent of the outlay in a year on works in progress on the above types of projects should be exempted from payment of dividend for three years. Evidence discloses that the rate of dividend charged to General Revenues has always been more than the borrowing rate of Government, at least, from 1955-56 onwards, for which figures are available. It also discloses that interest rate which Government pays to railways on funds banked with Government is at the borrowing rate in spite of the fact that, on funds invested with railways by Government by way of capital-at-charge, railways pay dividend at a higher rate. Moreover, dividend is payable to General Revenues, whether railways make profit or not. Although, from 1931-32 to 1936-37, such levy was foregone by Government, presumably because of financial losses incurred in those years, evidence is that such a policy is not being followed recently.

6.209. Evidence discloses that, after Independence, railway finances were rosy till 1965-66. Till that year, in spite of above constraints, railway finances were such that railways could pay dividend to Government. However, since 1966-67, there has been a series of deficits in railway budgets. Deficit, actual or estimated, in each year is as follows :

Year	Deficits or estimated deficits.
1966-67	.. Rs. 18.27 crores.
1967-68	.. Rs. 31.53 crores.
1968-69	.. Rs. 7.86 crores.
1969-70	.. Rs. 9.83 crores.
1970-71	.. Rs. 23.88 crores.
1971-72	.. Rs. 6.87 crores.

Thus, total deficit between 1966-67 and 1971-72 is of the order of Rs. 98.24 crores. Evidence shows that in the result, Development Fund and Revenue Reserve Fund have become fully exhausted. In fact, railways have been required to borrow loans from Ministry of Finance to meet their dividend and other obligations. The consequence has been that Development Fund owes Rs. 87.17 crores and Reserve Fund Rs. 38.83 crores to General Revenues at the end of 1971-72. These loans and interest thereon will have to be repaid by railways from out of future earnings.

6.210. The speech of the Hon'ble Minister for Railways delivered on 24th May 1971, at the time of presentation of Railway Budget, 1971-72, shows that railways suffered a loss in 1970-71, under the following Heads, of the amounts shown against each Head :

Sl. No.	Head	Amount of loss. Rs.
1	Unremunerative Branches .	8.00 crores
2	Passenger traffic other than suburban passenger traffic	47.00 crores.
3	Travel on suburban trains .	12.00 crores.
4	Transport of foodgrains and pulses	17.50 crores.
5	Transport of coal	12.00 crores.
6	Transport of fodder and oilcakes	5.80 crores.
7	Transport of ores from pit-heads	3.90 crores.
8	Transport of other Bulk Commodities	12.80 crores.
	Total	119.00 crores.

6.211. According to the Board, if demands of the Federation under the present Term of Reference were to be granted, financial burden on railways will be of the order of Rs. 47.68 crores per annum. This estimate does not include additional expenditure which will be involved if some categories are removed from Excluded classification; if rate of overtime is increased to twice the ordinary rate and additional expenditure which will be required to pay increased overtime if the present standard rosters are modified. Moreover, since the Board filed its reply, a few additional burdens have been thrown on railways which must be noted too. As a result of the recommendation of Third Pay Commission to pay first and second interim reliefs to railway servants, additional financial burden on railways will be of the order of Rs. 36 and 14.7 crores per annum respectively. Moreover, evidence is that, as a result of increases in travelling and dearness allowances, in prices and arbitration awards, additional financial burden will be of the order of Rs. 13 crores, 1.25 crores and 1 crore per annum respectively. There will also be a further burden of Rs. 2.40 crores on account of flood damage.

6.212. On the above facts and figures, the contention of the Railway Board is that, if railways are called upon to bear an additional annual burden of the order of Rs. 47.68 crores plus other additional burdens, total deficit in Railway Budget will be such that demands of the Federation, under this Term of Reference, should be rejected on the sole

ground that railways will not be in a position to bear the burdens arising out of the demands made under this Term. It further contends that, even if above figures are corrected because of withdrawal and/or modification of some demands and even if reliefs recommended by the Convention Committee, 1971, are taken into account, still, the additional burden which railways will be called upon to bear will not be less than of the order of Rs. 45 crores per annum. Mr. Mahadevan contends that, even if the relief of the order of Rs. 100 crores in five years recommended by the Convention Committee, 1971, in its interim report, is considered, the relief will be no more than Rs. 20 crores per year and that this relief can, at the most, neutralise the additional burden of Rs. 15 to 16 crores on account of the second interim relief granted by Third Pay Commission. He contends that railways will still have to bear an additional burden of the order of Rs. 45 crores per annum in future. He admits that figures of additional expenditure are just estimates and do not necessarily reflect the actual additional burdens. He contends that, all the same, the additional burden likely to be imposed will be of such an order that, on the whole, I should reject the demands under this Term solely on the ground that railways cannot bear such an additional burden without incurring the risk of a financial crash-down.

6.213. Before discussing the reply of Mr. Kulkarni to the above pleas of the Railway Board, it will be convenient if I mention at this stage the causes for current financial embarrassment of railways. K. S. Gupta has listed two causes for financial stringencies : (1) non-materialisation, during the Third Plan period, of expected goods traffic because of general slackness of economic activities in the country, and (2) disproportionate increase in expenditure incurred on staff and commodities used by railways. The publication "Central Facts and Major Problems, May 1971" lists the following two causes : (1) rates of freight and passenger fares have not kept pace with increase in cost of operation on railways, and (2) volume of goods traffic declined in 1966-67 and 1969-70. The Report of the Study Team on railways of Administrative Reforms Commission mentions the following two causes : (1) rapid increase in capital-at-charge and consequent liability to pay more dividend and (2) inadequate development of goods traffic.

6.214. From materials on record, the causes for the series of financial shortfalls in Railways Budgets appear to be as follows :—

(i) For the period from 1950-51 to 1970-71, goods freight and passenger fares have not kept pace with the cost of operations on railways. Passenger fare charges per passenger kilometre have increased by 69 per cent and so also freight charges per tonne kilometre, although, during the same period, increase in expenditure on iron and steel is of the order of 200 per cent, on cement of 148 per cent, on coal of 138 per cent, on diesel oil of 102 per cent and on electricity of 88 per cent. Increase in per capita expenditure on railway staff, during the period from 1950-51 to 1970-71, is of the order of 171 per cent. As appears from observations made in para. 296 at page 185, by the Study

Team on railways of Administrative Reforms Commission, freights on a number of commodities do not meet actual cost of transportation. The last part of paragraph 15 at page 11 of "Central Facts and Major Problems, May 1971" gives a complete list of commodities the freights of which are not cost-based. This constitutes by weight about 39 per cent of the total revenue earning traffic on Indian Railways. From the "Review of Performance of Indian Government Railways, February 1963", it appears that the ratio of expenses to earnings on railways is 111:100 in the case of passenger service and 84:100 in the case of goods service. The Hon'ble Minister for Railways in his Budget speech on 24th May 1971 for the year 1971-72 observed that passenger services were being subsidised from goods services and, according to Mr. Kulkarni, the position has deteriorated since then. There is reason to believe that passenger fares and goods freight charges on Indian railways are amongst the lowest in the world and that, whenever an attempt to increase passenger fares is made, it has proved abortive. According to "Review of Performance of Indian Government Railways, February 1963", passenger traffic rates are highly unremunerative and, according to Mr. Kulkarni, the position has worsened since then. There is no doubt that suburban passenger traffic rates at Calcutta, Bombay and Madras are highly unremunerative and that, in fact, that traffic is being subsidised from General Revenues of railways. Total loss incurred by railways under this head in 1970-71 was of the order of Rs. 12 crores. Losses incurred by railways under above heads are all the more glaring because evidence discloses that railways are using their assets more and more intensively every year. According to the "Central Facts and Major Problems, May 1971", at page 5, paragraph 6, whereas traffic has increased, number of locos and wagons has decreased. According to the same booklet, in para 7 at page 5, Indian railways stand second only to Japanese railways in their operational efficiency. According to "Indian Railways—1969-70", the operational efficiency of railways has increased by 190.7 per cent in terms of net tonne kilometres, although increase in the number of wagons is only of the order of 116.1 per cent only and that improvement is of the order of 121.9 in 1970-71 as compared to 100 in the base year 1950-51. Thus, in my opinion, there is overwhelming evidence in the case to justify the contention of the Federation that one of the main causes for the deficits in Railway Budgets has been that goods freights and passenger fares have not kept pace with operational costs on railways. This is, to a large extent, due to the facts (1) that freights on a number of commodities are kept low for a variety of reasons, (2) that railways are not being permitted to increase passenger fares, and (3) that suburban traffic in the abovementioned three cities is being subsidised.

(ii) The second cause for the series of deficits in railway budgets is rapid increase in railways' dividend liability. This increase is due to rapid increases in capital-at-charge and in the rate of dividend. Total railway capital assets have more than doubled during the period from 1960-61 to 1969-70. The rate of dividend increased from 4 per cent in 1960-61 to

4.5 per cent in 1965-66 in regard to capital-at-charge invested upto 31st March 1964, and 6 per cent in regard to capital-at-charge invested thereafter. In addition to this increased rate of dividend, railways have to pay 1 per cent more on capital-at-charge invested upto 31st March 1964 in lieu of abolition of passenger fare tax. Out of this levy, Rs. 16.25 crores are payable in lieu of passenger fare tax and the balance to States to assist them to provide for reserves for financing such safety works as manned level crossings, overbridges and underbridges—works in which railways are interested along with States. Evidence discloses that, though States are being paid a portion from the levy of 1 per cent, railways complain that States do not spend the fund for the purposes for which it is created. Therefore, there is justification for Mr. Kulkarni's contention that 1 per cent is more or less an addition to the rate of dividend which railways are required to pay to Government and it is now no longer a tax on passenger fares. Moreover, though States do not utilise the proceeds of the levy on passengers, railways have had to increase expenditure on passenger amenities from Rs. 2.4 crores per annum at the beginning of the First Five Year Plan to Rs. 4 crores per annum in the Fourth Five Year Plan. Evidence also shows that railways have to operate lines which are not remunerative on the ground that they are strategic from national point of view. Further, railways are required to operate even commercially important lines though they are unprofitable and even result in loss. Though all this is done mainly in national interest, still, railways were required to pay dividend on those unremunerative lines and they will continue to pay such dividend, unless the recommendation of the Convention Committee, 1971, on that subject is accepted. Another feature which calls for comment is that, whatever be the theory, whether the Union is the sole owner or the tax-payers are the sole shareholders of railways, they are called upon to pay to their owner or shareholders a fixed rate of dividend every year even though they may incur loss on an overall basis in any year. This dividend is exacted in the face of the fact that the Union, the taxpayer and the nation, derive from railways a number of concessions which benefit them all. According to Mr. Kulkarni, the total money value of such concessions is of the order of Rs. 120 crores per annum. Another feature which calls for comment is that whereas railways are called upon to pay dividend at a rate of interest higher than that of borrowing rate, Government pays to railways interest on funds banked by them with Government at borrowing rate only.

(iii) The third cause for budgetary shortfalls is the non-materialisation of expected goods traffic on railways. Development on railways during the first four Plans was made on the basis of targets fixed by Planning Commission. Though the targets were low in the First Plan, they were stepped up significantly in Second and Third Plans. However, unfortunately, these targets were never realised. They went away specially during the period of the Fourth Plan. The result has been that there is a significant lag between targets and their realizations. Of course, no one can be blamed for this result. Every planner undertakes

risks especially of non-materialisation of targets set up by him. But, Mr. Kulkarni is right in contending that loss arising on that account or, in any case, a material part thereof, should not fall on railways alone but must be borne by the nation as a whole or at least shared by it with railways.

(iv) K.S. Gupta's evidence is that disproportionate increase in staff expenditure is one of the causes for railway budgetary deficits. I am inclined to agree with the submission of Mr. Kulkarni that this view is not correct. According to the Report of the National Labour Commission, page 197, Table 14, Item 11, the All-India Consumers' price index, during the period from 1949-50 to 1967-68, has increased from 100 to 213. Record of the case shows that wages of labour have increased during the above period in terms of real wages from 100 to 101 only. Under the circumstances, I am not prepared to proceed on the basis that a part of budgetary shortfalls is due to benefits given by railways to their labour during the above period.

6.215. Having set out my own conclusions in regard to matters in dispute, I now proceed to consider broadly the submissions of both sides in support of their rival contentions on the financial aspects involved in the present demand.

6.216. I am not in agreement with the Railway Board's contention that the claim for reduction of the number of hours, even if otherwise justified, should be withheld on the ground that such a claim will damage or seriously hamper national economy and economic climate of the country. In support of this contention, the Board relies on some observations made in para 295 of Chapter VIII of the Report of the ILO Committee of Experts On Application of Conventions and Recommendations, 1967 in which has been set out a number of grounds for opposing the claim for shorter hours of work. One of the grounds so set out is the financial ground. However, the observations on which the Board relies are made by the Committee in the context of a demand for reduction of working hours from 48 to 40 and not in the context of a demand for reduction of such hours from 54 to 48. Mr. Mahadevan relies also upon observations made by the National Labour Commission in paras 9.33 to 9.36 at pages 103 to 105 of their Report. In paragraph 9.36, the Commission states that, for implementing Recommendation No. 116 of the ILO, financial considerations must be borne in mind. However, these observations are also made in the context of the demand for reduction of the number of working hours from 48 to 40 per week and not from 54 to 48. The observations of the Commission in paragraph 9.39 to the effect that the above recommendation also applies to railways must also be read in the same context. It is true that, in considering any proposal affecting an industry, it is the duty of an adjudicator to bear in mind its financial implications if such a plea happens to be raised. It is equally true that, though the above observations of high-powered Commission and a Committee of Experts are made in the context of a demand for 40 hours a week, they need not be so necessarily confined and they must also be carefully considered, and if necessary

or desirable, may be applied in the context of a demand for 48 hours a week. However, in so far as the plea is not based on financial consideration but is based on the economic situation prevailing in the country, in my view, that plea must be considered and appreciated slightly from a different angle. When considering the latter plea, national policy in regard to the maximum number of daily and weekly hours will be equally relevant, if not more. From materials on record and for reasons already given, it is clear that, though Washington Convention has not been ratified by India, the trend of Indian national legislation, since the passing of that Convention, is in favour of ceilings of 8 hours per day and 48 hours per week. It is true that there are some sectors even now in India where the ceiling hours are more, but, it is noteworthy that, even in regard to such sectors, authorities competent to speak on the subject, including National Labour Commission, recommend adoption of the same ceilings. Labour legislation, national or international, does not say that, once daily and weekly ceilings are fixed, financial stringency, particularly of an individual undertaking, is a ground for refixing such ceilings. Moreover, it is significant and noteworthy that such ceilings are applied to labour employed in all undertakings in public sector even though some of them are incurring losses. It is true that, having regard to the facts that railways are national undertakings, enjoy a monopoly and have, therefore, important roles to play in the development of national economy, they, including railway labour, can be called upon to discharge their functions in such a way so as not to damage national economy and may even be expected to function in such a way as to advance national interest and national economic prosperity. However, even if such an approach is justified, I have no doubt that, unless national interest and policy compel one to do so, it is unjust and even unwise to treat railway labour differently from other labour, working in the country. Moreover, in considering the present demand for reduction in the number of working hours, it is necessary to bear in mind that the demand is several years old and that it was made when railways had not only surplus budgets but actually contributed large sums to General Revenues. Therefore, it must be borne in mind that, if the demand had come to be considered and decided within a reasonable period of time after it was made, it is probable that the present plea of damage to national economy would not have been made, and, if made, would have certainly been rejected. Moreover, it is noteworthy that, though my decision on the demand for reduction of weekly ceiling puts railway labour on a par with non-railway labour in the country, railway labour will still suffer from certain disabilities which non-railway labour does not in regard to such matters as daily ceiling of working hours, overtime allowances and daily recess. Under the circumstances, the plea that the claim for reduction of working hours should be rejected on the ground that it is likely to hamper national economy should be rejected.

6.217. As regards the Board's plea that all or some of the claims under the present Term, if granted, will affect railway finances adversely, the main contentions of Mr. Kulkarni are as follows : (1) that,

in reality, railways are not losing concerns and that, in any case, even if they are, they can easily bear additional burdens which may have to be borne as a result of the grant of the Federation's present demand; (2) that whatever losses at present are there are more due to constraints on railways and financial arrangements imposed on them. Mr. Kulkarni contends that losses attributable to the above causes can be avoided if railways are run in consonance with commercial principles and that, in any case, even if this is not done, such losses should not be thrown on railway labour alone but that they must be thrown either wholly or substantially on the nation or must be equitably shared by them.

6.218. I am not in agreement with Mr. Kulkarni's submission that railways are not losing concerns. There is no doubt that, at least since 1966-67, they have been losing to the tune of crores of rupees every year. Though railway finances can turn a corner, if some measures for improving them are adopted, there is no certainty that, with or without such measures, railways will in future not have deficit budgets. Though I am not inclined to agree with the extreme view propounded by K.S. Gupta that financial position of railways is such that it cannot bear any part of the additional burden likely to be thrown by the acceptance of the demand, I have no doubt whatsoever that, at least in foreseeable future, railways may find it difficult or may have to strain their every nerve if additional burden of the order of Rs. 47.68 crores per annum is thrown on them. I am also not inclined to agree with the submission of Mr. Kulkarni that, since railways will absorb additional burden of Rs. 51 crores per annum on account of two interim reliefs granted by third Pay Commission and will also absorb further burdens that may arise on account of revision of pay structures of their staffs, therefore, the plea of the Board made in 1969 that railways will not be able to bear an additional burden of Rs. 47 crores per annum has been falsified. On the contrary, in my opinion, the above burdens provide a good additional cautionary ground to see that a further additional burden may not break the camel's back. I am also not in agreement with Mr. Kulkarni's submission that, as an adjudicator, I should reconstruct railway finances on commercial lines and review the financial situation on the basis as if financial losses attributable to the imposition of legislative constraints and financial arrangements are not there at all and that I should proceed on the basis that measures have been adopted to eliminate the causes for budgetary shortfalls and that, therefore, the present demand of the Federation can be financially sustained and granted. I am entirely in agreement with Mr. Mahadevan's submission that it is most improper for an arbitrator to interfere with Parliamentary decisions, its policies and/or its measures. I agree with his submission that, simply because an adjudicator is called upon to adjudicate upon demands of labour of a national institution, he can be so presumptuous as to take upon himself the task of considering proposals for re-organisation of a national institution and to reconstruct its finances and financial arrangements on what he considers to be a more proper and more just disposition. In my opinion, railway finances represent the will of Parliament, embody its decisions and con-

tain its directions and must be faced as such in their naked realities. It may be that, from the point of view of railway labour, Parliamentary decisions may be vulnerable. It may be that, if some measures suggested by Mr. Kulkarni are adopted, they may improve railway finances and thus, they may pave way for the elimination of the plea based on railway finances. All the same, in my opinion, it will be wrong to undertake an inquiry on the above lines. Parliament is the supreme authority to decide how national affairs should be arranged. In taking decisions on national matters, Parliament has full jurisdiction to take or not to take into account considerations which affect railway labour. It is not bound to be influenced by such considerations alone. In arranging the affairs of the nation, Parliament is bound to be influenced by a host of other considerations such as those of national economy, national development, requirements of national planning, achievement of military and strategic targets, considerations of geography, region and similar other considerations. Whilst regulating railway finances, Parliament has a right not only to consider these matters but has a right to decide which of the relevant matters should have precedence or priority and which matters should be relegated to subsidiary importance. Moreover, it is important to notice that not only railway industry, but all industries are subject to the sovereign authority of Parliament and, so long as Parliament acts within the frame-work of Indian Constitution, its authority is supreme and no power, judicial or executive, can ever challenge any decision or directive taken or given by Parliament on any relevant subject. Moreover, Indian railways are not, like other industries, private concerns. They are public undertakings run to achieve national interests and national objectives. Besides, they enjoy a monopoly. Because of these characteristics, railways are bound to comply with such constraints as Parliament may, in its wisdom, choose to impose upon them.

6.219. However, in any dispute with railway labour, in my opinion, it is not proper to regard the plea of financial difficulty as a final word in the matter. This is so because, whilst considering the question as to what effect an adjudicator should give to Parliamentary decisions and directives given in the context of railway management, it is his duty also to consider Parliamentary decisions and directives on labour problems, either general or with special reference to railway labour, and, if there is a conflict between the two sets of decisions and directives, to attempt to reconcile them or, if the conflict persists, to search for what Parliament has in mind in regard to priority, precedence and preference in regard to such decisions and/or directives. Therefore, whilst adjudicating upon any railway labour dispute, it is the duty of an adjudicator, if a plea of financial difficulty is advanced, to consider the plea on its own merits, but, it will not be proper for any adjudicator to run away with the plea. If the plea of financial difficulty is rejected, then, the demand, if just and proper, will deserve to be accepted. However, even if the plea of financial difficulty is accepted, adjudicator may not be justified in summarily rejecting the demand on that single ground alone. It may be his duty to test the demand not only with reference to the plea of financial

difficulty but in the context of other relevant Parliamentary decisions and directives which may be brought to his notice. If the adjudicator finds that the demand is otherwise justifiable on grounds of national policy, labour legislation or is in consonance with the general law of the land, it will be his duty to consider whether, in spite of the increase of financial burden on them, railways should or should not be required to comply with the demand. Whilst considering the validity or otherwise of any of the demands under the present Term of Reference, even if all or some of the demands throw financial burden on railways, it is necessary to consider whether the demands are in conformity with Parliamentary will expressed on a subject relevant to the demands. For example, Parliament has enacted that railway labour shall be classified into a certain number of classes and has laid down the tests as to how those classes are to be determined. If any of the demands of the Federation is based on the ground that the concerned railway administrations have failed to comply with Parliamentary directives on this particular subject, then, I have no doubt whatsoever that, the latter directive being more specific, should prevail in spite of the fact that railway budgetary deficits arise because of Parliamentary directives in regard to railway finances. For example, where a railway servant who is Continuous is being treated as Essentially Intermittent or a railway servant who is Intensive is being treated as Continuous, then, in my opinion, the plea of financial difficulty cannot be regarded as a just plea. The demand of the Federation that railway servants, wrongly classified, should be upgraded to the proper classification in accordance with classification they deserve under the statutory definitions of different classes, must necessarily be granted, even though upgradation may increase financial burden of railways. Therefore, in my opinion, in so far as any additional financial burden will come to be incurred by Indian railways as a result of my decisions as to which of the categories of railway servants should be treated as Intensive, the plea of financial burden cannot have any relevance whatsoever. Similarly, as regards the demand for removal of certain categories from Excluded classification, the plea of financial stringency cannot have any importance whatsoever. If the adjudicator comes to the conclusion that employment of labour, continuously for a period of 24 hours, is inhuman or amounts to exploitation thereof, then, having regard to the broad national policy that working hours of labour should be such that labour should not come to be exploited or should not be called upon to work more hours than human endurance can bear, then also, in my opinion, financial implication should not be regarded as an impediment in the way of such a demand. Therefore, any additional burden which railways will have to bear on account of my decisions regarding Excluded classification of some categories of railway servants should not be given an over-riding consideration. If an industry cannot be carried on without exploitation of its labour or can be carried on only by calling upon its labour to work beyond the point of human endurance or by compelling its workers to work under conditions which amount to slavery or which leave no scope for fulfilment of domestic and social needs of labour or which affect their industrial health or

efficiency, then, in my opinion, the plea of financial stringency should be subordinated to the above considerations of national policy which throbs through national legislation. Parliament has expressed its will in no uncertain terms by enacting legislation in regard to labour in general in India. Even as regards those demands which do not come within the purview of the above principles, they might still have to be considered and tested on grounds of national priorities or, in some cases, even discharge of international obligations. It may be necessary to apply these tests, having regard to the peculiar features of railway finances. The adjudicator, on the one hand, may be required to take into account interests of national economy in the context of railway budgetary deficits and pit them against the effect of grant or non-grant of those demands on national policy, national interests and national obligations. In some cases, the question may reduce itself into a consideration of priorities to be given to the subject. Non-grant of a demand may affect the above considerations in such a way that an adjudicator may conclude that additional financial burden is permissible to achieve the objectives themselves. Railways are not purely commercial concerns. They are national assets, created to cater to national needs and economy. Railway labour is a part of railway industry. An adjudicator will be justified in considering what effect grant or non-grant of any of the demands will have upon the efficiency of railway working as a whole and not merely upon its financial arrangements. An adjudicator must also bear in mind what effect such grant or non-grant will have upon health of railway labour and efficiency of railway labour and administration and, if he concludes that such health and/or efficiency will suffer in such a way as to cause damage to the railway institution as a whole, he may decide to subordinate the plea of financial difficulty to preservation of such health and efficiency. Therefore, I have come to the conclusion that the plea of financial difficulty can be given the same importance as it is being given in other industrial disputes only after the validity or otherwise of a particular demand has been tested on one or more of the above principles just mentioned by me. Subject to all just and proper exceptions, I propose to consider the plea of financial stringency on the basis of those principles.

6.220. For the purpose of determining the financial implications of my conclusions under this Term of Reference, the conclusions may broadly be summarised as follows :

- (1) Except in the case of Intensive workers, daily and weekly hours of work have been varied.
- (2) Gatemen C, Saloon Attendants, Care-takers of Rest Houses, Reservoirs, etc., and Bungalow Peons who reside at or within a short distance from the residence of their officers, have been removed from Excluded classification and classified as Essentially Intermittent workers.
- (3) Some categories of railway workers have been presumed to be Intensive workers and unless job analyses, to be undertaken within a certain period of time, prove that they are

Continuous, they are required to be classified as Intensive.

- (4) Travelling spare on duty is held to be a period of duty.
- (5) Overall duty at a stretch of running staff beyond 12 hours upto 14 hours is permitted for a period of two years from the date of this Report and is to be progressively reduced every two years, so that the ceiling for such duty at a stretch comes to be fixed at 12 hours after 8 years.

6.221. As already indicated, change in daily and weekly hours of work decided upon by me is in consonance with national labour policy, national legislation and international thinking on the subject. In my opinion, Parliamentary will on this subject is so clear that it will not be proper to negative my conclusion on the subject on the ground of financial implications involved therein. Apart from this, I am not convinced that financial implications of my above conclusion will be of such an order that it can be postulated with confidence that railways, though financially in straitened circumstances, will not be in a position to bear any additional burden involved in the matter. Broadly speaking, changes in hours of work are more marginal than substantial. Even today, some rosters are based on the principle of work for 8 hours a day and 48 hours a week. It is true that, at present, quite a large number of rosters are based upon work for 51 hours but, to a large extent, the categories of railway servants who are called upon to perform duty for such a period are those who are required to do preparatory and/or complementary duty. Because my conclusion permits railway administrations to exact such duty without payment of overtime, it will not prevent railways from exacting such duty as they do now. I have also retained the principle of averaging on railways which retention will give railway administrations further flexibility in the matter of hours of work. However, the present weekly average of 54 hours in the case of Continuous and 75 in the case of Essentially Intermittent workers has been reduced to 48 or 48 plus time required for preparatory and/or complementary work in the case of Continuous workers, and 72 in the case of some EI workers and 60 or less in the case of other EI workers plus hours required for performance of preparatory and/or complementary duty. Therefore, the only substantial result of my above conclusion will be that, whereas at present overtime has to be paid in the case of Continuous workers after rendition of duty of 108 hours bi-weekly plus, where applicable, the number of additional hours for doing preparatory and/or complementary work, it will have to be paid on rendition of duty of 96 hours bi-weekly plus, where applicable, preparatory and/or complementary duty, and in the case of Essentially Intermittent workers, it will have to be paid after rendition of duty between 48 and 60 hours per week in the case of some Essentially Intermittent workers and in the case of others after rendition of duty for 72 hours per week. Therefore, the net result of my above conclusion will be an increase in the incidence of overtime. Having regard to the fact that the rate of overtime has been maintained by me at one and a

half times as at present upto statutory limits in the case of both sets of the above workers and that overtime has to be paid at the higher rate of twice the ordinary rate for work beyond statutory limits, it is quite clear that the net effect of my conclusion under this head will be an increase in the payment of overtime. Record does not show what exactly will be the increase in additional expenditure on account of increase in the amount of overtime and increase in the rate of overtime. But, having regard to Dutta's evidence that the incidence of overtime in 1969-70 was of the order of Rs. 4.3 crores out of a total wage bill of Rs. 412 crores which works out to 1.05 per cent only, in my opinion, even assuming that there will be some increase, I am not satisfied that the increase in expenditure will be of such an order that railways with a total budgetary expenditure of about Rs. 885 crores per annum will not be able to bear the additional burden.

6.222. It is not quite clear as to what will be the additional expenditure which railways will have to bear on account of my conclusion regarding the demand for change of classification of certain categories of railway workers. However, even assuming that there will be an additional burden on this account, in my opinion, having regard to the fact that the existing classification of railway workers represents the specific will of Parliament on that subject, any addition to railway expenditure cannot be regarded as a good ground for negating my conclusion on the subject. However, the change in classification of Gatemen C, Saloon Attendants, Care-takers of Rest Houses, Reservoirs, etc., and Bungalow Peons residing at or within a short distance from the residence of their officers, stands on a different footing. Change of classification of these servants from Excluded to EIs is the result of my own conclusion on the subject. However, my conclusion in regard to these categories of servants comes within the purview of one of the main principles enunciated by me in paragraph 6.219. In my opinion, employment of the above labour for a period of 24 hours is inhuman, amounts to its exploitation and is directly opposed to the broad national policy that working hours of labour should be such that labour should be left sufficient leisure for meeting social, domestic and civic obligations, that labour should not be called upon to work more hours than human endurance can bear and that labour should not be exploited. There are no actual figures on record as to what will be the additional expenditure which railways will have to incur as a result of my above conclusion. However, in my opinion, whatever may be that additional burden, having regard to the above factors, financial plea in regard thereto must be rejected.

6.223. As regards my conclusion on travelling spare on duty, there are also no figures available as to what additional expenditure will have to be incurred on that account. But, having regard to the fact that this conclusion is based on the main principle which I have accepted as obtaining in India and other countries, namely, that, hours of employment should be considered to be those during which an employee is at the disposal of his employer at his employer's instance, and, moreover, having regard to the fact

that this conclusion is also based upon a concession made at the time of arguments on behalf of the Railway Board, the plea of financial difficulty in regard to this conclusion must also be rejected.

6.224. As regards my conclusion on maximum hours of duty at a stretch of running staff, there will be no immediate increase in expenditure on that account and whatever increase may result, it will be spread over a period of eight years. Apart from this, in my opinion, financial plea in regard to any such increase in railway expenditure must also be rejected on the ground that performance of duty beyond that which has been finally concluded upon by me is not in interests of railway administration as a whole since it is bound to affect health and efficiency of running staff with their inevitable repercussions on safety and efficiency of railway working as a whole.

6.225. For above reasons, I have come to the conclusion that there is no good or sound ground for rejecting any of the demands of the Federation in regard to which I have reached conclusions favourable to the Federation on the ground of financial difficulty.

Summary of main decisions

6.226. For the sake of convenience, I summarise my main decisions as follows :

- (1) Hours of employment shall be those during which an employee is at the disposal of his employer at the employer's instance, *i.e.* duty of an employee commences when he places himself at the disposal of his employer at the latter's instance, and such duty continues until he is fully at liberty to leave the place of duty.
(*Vide* para 6.51).
- (2) Existing classification of workers into Continuous, Intensive and Essentially Intermittent should be maintained. No decision is recorded regarding Excluded classification, except in cases of Gatemen C, Saloon Attendants, Care-takers of Rest Houses etc., and Bungalow Peons residing at or close to the place of work, as no demand has been made in regard to such classification.
- (3) Demand of the Federation that a new classification or a series of new classifications of employments should be introduced in-between Continuous and Intensive classifications, is rejected.
(*Vide* para 6.67).
- (4) Demand of the Federation that hours of work of those railway servants whose work is comparable to the work of employees in other Government Departments should be the same as applicable to the latter class of employees, is rejected.
(*Vide* para 6.68).
- (5) Except as otherwise provided herein:—
 - (A) daily and weekly hours of employment of Continuous and Essentially Intermittent

workers should be fixed at 8 and 48 respectively.

(Vide para 6.53).

- (B) Daily and weekly hours of Essentially Intermittent workers may be increased by such number of hours as may be necessary, but not exceeding those mentioned in sub-para (8) herein below.

(Vide paras 6.53, 6.131, 6.132 and 6.133).

- (C) Weekly hours of employment of Intensive workers will continue to be maintained at 42.

(Vide para 6.53).

- (D) (a) Preparatory and/or complementary work, which expression also includes taking over and handing over charges, can be demanded from workers in regard to work which must necessarily be carried on outside the limits laid down for the general working of an establishment, branch or shift.

(Vide para 6.54).

- (b) The concerned administrations will determine, in the light of the propositions hereinafter mentioned, the time required for preparatory and/or complementary work in regard to each classification of worker or workers and, if such time requires to be included in rosters, it shall be so done.

(Vide paras 6.53 and 6.57).

- (i) For Continuous, Intensive and, Essentially Intermittent workers who are called upon to do preparatory and/or complementary work for a period of less than 15 minutes per day, such time shall not be considered as period of duty and may not be mentioned in the rosters of such workers.

- (ii) Preparatory and/or complementary work between 15 and less than 45 minutes per day in the case of Continuous workers will be treated as half an hour's work, will be reflected in rosters and considered as period of duty.

- (iii) Continuous workers who are required to do preparatory and/or complementary work for a period between 45 minutes and one hour per day will be considered to have rendered duty for one hour. The same will be reflected in their rosters and will be considered to be period of

duty. However, Continuous workers cannot be required to do preparatory and/or complementary work so as to violate the statutory limits.

- (iv) As regards Intensive workers, preparatory and/or complementary work for a period between 15 and 30 minutes will be considered to be duty for 30 minutes and rosters will be prepared accordingly. However, no Intensive worker shall be required to do such work as to violate the statutory limits.

- (v) In the case of Essentially Intermittent workers, preparatory and/or complementary work for a period between 15 and 30 minutes will be considered to be duty for 30 minutes and rosters will be prepared accordingly. However, the maximum additional hours for such type of work should be fixed at 3 hours per week in the case of Class 'C' Gatemen, Saloon Attendants and Care-takers of Rest Houses and Reservoirs, etc., and EI workers at roadside stations who are given residential quarters within a radius of .5 Kilometre from their places of duty. As regards the rest of EI workers, the maximum additional hours should be fixed at 4½ hours per week.

- (vi) Existing practice in regard to running staff of treating the whole period from signing-on to signing-off as period of duty will continue.

(Vide paras 6.57 and 6.132).

- (E) In addition to the hours of work as fixed above, all railway workers governed by HER can be called upon to render duty beyond statutory limits applicable to them in the circumstances mentioned in and by an order of temporary exemption made under section 71-C of the Railways Act by a competent authority.
(Vide para 6.64).

- (6) (a) Principle of averaging is warranted in railway working in regard to (i) running staff, (ii) operating staff, (iii) shift workers, and (iv) those workers whose work is bound up with the work of

workers comprised in the above three categories. The concerned administrations will examine cases falling within category (iv) in the light of the principles enunciated in Article 5 of Washington Convention, and determine within 2 years from the date of this Report whether averaging should or should not be permitted in their cases.

(Vide para 6.60).

- (b) Averaging period for Intensive and Continuous workers should be fixed at two weeks and for EI workers at one week.

(Vide para 6.61).

- (c) Continuous and Intensive workers will earn overtime if they put in more than 96 and 84 hours respectively in two weeks plus, in those cases where they are required to do preparatory and/or complementary work, such additional number of hours as they are required to work on that account during that period.

(Vide para 6.62).

- (d) EI workers will earn overtime if they are required to put in more hours in a week than determined for them plus, in the case of those EI workers who are required to do preparatory and/or complementary work, such further number of additional hours during the week in which they may be required to do preparatory and/or complementary work.

(Vide para 6.62).

- (e) In the case of those railway workers whose cases are decided by administrations as not falling within the purview of Article 5 of Washington Convention, overtime will be that which the concerned worker renders everyday beyond daily limit.

(Vide para 6.60).

- (f) Daily rate of overtime should be calculated on the basis of the total number of rostered hours during averaging period fixed for the concerned employee.

(Vide para 6.63).

- (g) Rate of overtime shall be $1\frac{1}{2}$ times the ordinary rate for overtime work beyond rostered hours but within statutory limits, but, it shall be twice the ordinary rate for overtime worked beyond statutory limits.

(Vide para 6.64).

- (7) Subject to the following two exceptions, all time spent for travelling spare on duty should be considered as period of duty. The exceptions are (1) when a worker is provided with facility of crew rest van, and (2) when a worker does not travel on any day

beyond a radius of 8 kilometres from his place of duty. It is clarified that if he so does on any day, then, the whole time spent for travelling spare on duty including distance within radius of 8 kilometres will also be considered as period of duty.

(Vide para 6.72).

- (8) (A) Demand of the Federation that Essentially Intermittent classification should be abolished is rejected.

(Vide paras 6.122 and 6.123).

- (B) Class C Gatemen, Saloon Attendants and Care-takers of Rest Houses and Reservoirs etc. and Bungalow Peons, who reside at or within a short distance from the residence of their officers, should be removed from Excluded classification and should be classified as Essentially Intermittent workers.

(Vide paras 6.82, 6.83, 6.84, 6.85 and 6.133).

- (C) Subject to ceilings mentioned hereinafter, an Essentially Intermittent worker can be called upon to render duty for additional hours which may be fixed so as to accord with one or more of the principles enunciated in paragraph 6.127. The ceilings are as follows :

- (i) Class C Gatemen, Saloon Attendants, Care-takers of Rest Houses and Reservoirs etc. may be required to do duty for additional four hours per day and 24 hours per week. However, their averaging period will be two weeks so that the total number of hours which the above class of workers can be called upon to work may be 144 per two weeks on an average.

(Vide paras 6.131 and 6.133).

- (ii) Essentially Intermittent workers at roadside stations who are provided with residential quarters within a radius of .5 Kilometre from their places of duty may be called upon to do duty for 4 hours per day and 24 hours per week. Their averaging period will be one week, so that the above class of workers can be called upon to do work for 72 hours a week on an average.

(Vide paras 6.131 and 6.133).

- (iii) The rest of the Essentially Intermittent workers can be called upon to do duty for an additional number of 2 hours per day and 12 hours per week. Their averaging period will be one week, so that such workers can be called upon to work for 60 hours on an average in a week.

(Vide paras 6.131 and 6.133).

- (D) Decisions Nos. (B) to C (iii) should be implemented within two years from the date of this Report.
(Vide para 6.134).
- (9) The concerned administrations should take immediate steps for job-analysing the work and finalising the classification of Wireless Operators (including Operators who do partially controlling work but excluding monitoring Operators and excluding Operators who do exclusively controlling work) who are at present classified as Continuous, that is, those Operators who are engaged in the work of transmitting, receiving and watching messages, within one year from the date of this Report and that, if administrations fail to do so, then, at the expiration of the period of one year, such Operators whose cases have not been so finalised should be presumed to be Intensive workers and their hours of work fixed accordingly. In the latter contingency, it will be open to the administrations thereafter to begin or complete the analysis of such jobs at any time in future and, if any such analysis justifies the finding that the work of any particular Operator is Continuous, job of such a worker may be re-classified as Continuous.
(Vide para 6.158).
- (10) The concerned railway administrations should undertake and finish the job analyses in regard to employments of all Continuous Section Controllers and the prescribed authority should pass orders in accordance with law on the basis of such job analyses within two years from the date of this Report. If, within the latter period, a decision on the classification of any Continuous Section Controller is not reached by the concerned prescribed authority, then, with effect from the expiration of the above period of two years, the concerned Section Controller will be deemed to be an Intensive worker and classified accordingly. In the latter case, it will be open to the prescribed authority to reach a final decision on the subject at a later stage on merits in accordance with HER and if and when such decision is reached, effect may be given to the same.
(Vide para 6.159).
- (11) Demand of the Federation for automatic Intensive classification of (1) Yard Masters, (2) Assistant Yard Masters, (3) Yard Supervisors, and (4) Shunting team, is rejected.
(Vide paras 6.163 and 6.165).
- (12) Demand of the Federation for automatic Intensive classification of Telegraph Signalers on heavy circuits is rejected.
(Vide para 6.166).
- (13) Demand of the Federation that station staff at a crossing station where commercial work is nil or negligible should be classified as Intensive straight-off is rejected.
(Vide para 6.171).
- (14) Demand of the Federation that station staff at stations where 16 trains run each way on a single line in a cycle of 24 hours should be classified as Intensive straight-off is rejected.
(Vide paras 6.171 and 6.174).
- (15) Demand of the Federation that a Cabinman at a crossing station and at stations where 16 trains run each way on a single line in a cycle of 24 hours should be automatically classified as Intensive is rejected.
(Vide paras 6.172, 6.174 and 6.183).
- (16) Demand of the Federation for automatic Intensive classification of Platform Porters at a crossing station and at stations where 16 trains run each way on a single line in a cycle of 24 hours is rejected.
(Vide para 6.173).
- (17) Demand of the Federation for automatic Intensive classification of station staff at junctions is rejected.
(Vide para 6.180).
- (18) Demand of the Federation for automatic Intensive classification of operational staff General ASM, Platform ASM and Cabin ASM, at junctions where there are marshalling and/or goods yards is rejected.
(Vide para 6.180, 6.181 and 6.182).
- (19) Demand of the Federation for automatic Intensive classification of yard staff at junctions and at stations where more than 16 trains pass each way on a single line in a cycle of 24 hours is rejected.
(Vide para 6.184).
- (20) Running duty at a stretch of running staff should not ordinarily exceed 10 hours, but such duty may extend to a maximum of 12 hours provided concerned authority gives at least 2 hours' notice before the expiration of 10 hours to the concerned staff that it will be required to perform running duty for 2 hours more; provided further that total maximum hours of duty from signing-on to signing-off does not exceed 14 hours; provided further that total maximum hours should progressively be reduced by half an hour every 2 years from the date of this Report till the period of 12 hours is reached, i.e. at the end of 8 years from the date of this Report, total maximum hours of duty at a stretch from signing-on to signing-off shall not exceed 12 hours.
(Vide para 6.187).
- (21) When an administration wants any railway worker to come earlier and/or remain later by a total period of 15 minutes or more, the railway worker is not bound to do so

unless and until the period or periods for which he is required to come earlier and/or remain later are mentioned specifically in his roster.

(Vide para 6.189).

(22) As regards Wireless Operators, the present practice of reporting for duty before rostered hours by such period as may be less than 15 minutes will continue to be followed. However, if the concerned administration requires any Wireless Operator to report for duty for a period or periods earlier than his rostered hours by a period of 15 minutes or more, it may prepare his rosters accordingly.

(Vide para 6.189).

(23) The controversy regarding time to be taken by Deputy Chief Controllers for taking over and/or handing over should be dealt with and solved in the same manner in which the controversy in regard to Section Controllers is decided.

(Vide para 6.189).

(24) As regards Section Controllers, whilst the present practice as regards the time for taking over and/or handing over on different boards may be continued, the concerned administration should make up its mind on the subject within 6 months from the date of this Report and issue specific instructions as regards the time for taking over and/or handing over and get specific rosters prepared for all Section Controllers or for such of them as may be required to perform preparatory and/or complementary duties for 15 minutes or more and, in that contingency, fix the extent of time for such early arrival and/or late departure. If any Section Controller is required to come earlier and/or depart later by 15 minutes or more, overlapping rosters shall be prepared for him.

(Vide para 6.189).

(25) As regards SMs and ASMs including Platform and Cabin ASMs, the concerned railway administrations shall determine in each particular case within 6 months from the date of this Report whether the required period of time for taking and/or handing over is less than 15 minutes or otherwise and if it is 15 minutes or more, definite rosters will be prepared for all such SMs and ASMs. Unless such definite rosters are prepared, SMs and ASMs will be deemed to be required to come earlier and/or depart later by a total period of less than 15 minutes only before and/or after rostered hours.

(Vide para 6.189).

(26) As regards Booking and Parcel Clerks, if the concerned administration requires such staff to come and/or depart earlier and/or later than rostered hours, specific rosters will be prepared for them, except when they are required to come and/or depart for such purpose by less than 15 minutes.

(Vide para 6.189).

(27) As regards yard staff, *i.e.* Yard Master and Assistant Yard Master and Shunting Jamadar, there is no reliable evidence that they require 15 or more minutes for taking over and/or handing over charges.

(Vide para 6.189).¹

(28) A Cabinman does not require 15 minutes or more for handing over and/or taking over charge.

(Vide para 6.189).

(29) Existing provisions relating to periodic rest do not require any change except that class IV Excluded workers should be put on a par with EIs in the matter of periodic rest.

(Vide para 6.200).

(30) Demand of the Federation that the ratio of rest-givers and railway workers should be 1 : 6 is rejected.

(Vide para 6.201).

CHAPTER VII

TERMS OF REFERENCE NOS. 6 & 7—SCALES OF PAY ETC. OF GANGMEN, KEYMEN, GANGMATES AND HEAD TROLLEYMEN OF CIVIL ENGINEERING DEPARTMENT.

Preliminary

7.1. As common facts are involved, it will be convenient to deal with Terms Nos. 6 and 7 together.

7.2. Term No. 6 is as follows :

“All gangmen in the Civil Engineering Departments of the Railways should be granted an Arduous Duty Allowance of Rs. 3/- per month.”

7.3. Term No. 7 is as follows :

“The scale of pay of Gangmates in the Civil Engineering Department of the Railways should be raised to the skilled grade. Along with this, the scale of pay of Keymen and Head Trolley-men of the Civil Engineering Department should also be suitably enhanced.”

7.4. The claim on behalf of the gangman is that he should be paid an allowance of Rs. 3/- per month on the ground that the tasks he has to perform are arduous. The claim on behalf of the gangmate is that he should be allotted the scale of pay applicable to a skilled worker. The claims on behalf of the keyman and the head trolleyman are consequential to the claim made on behalf of the gangmate. Their claims are that, on revision of the pay-scale of the gangmate, their pay-scales should be suitably enhanced.

7.5. In these two Terms, I have to deal with a group of workers belonging to the Civil Engineering Department of Railways. This group of workers is described as a gang and, though the nomenclature is unsavoury, I propose to describe the group as such since the expression is not so regarded in railway parlance. A gang consists of (1) a certain number of gangmen, (2) a keyman, and (3) a gangmate. Though a keyman and a gangmate are inevitable constituents of a gang, the number of gangmen in each gang differs from place to place. The formula, known as the Lobo Formula, for fixing the strength of a gang is (1) length of gang beat, (2) density of traffic, (3) character of soil, (4) alignment of track, and (5) climate, especially the rain factor. The total number of gangs working on the Indian Railways is of the order of 10,400. The all-India average of the strength of a gang is 14.3 persons. Therefore, the above two Terms concern roughly one and a half lac railway servants. A gang performs duty in relation to maintenance and safety of railway track. Its primary function is to keep track safe and sound for passage of trains. A gang constitutes the basic unit of the organization for maintenance of railway track. A railway track includes culverts, level crossings, gates and bridges. A gangmate is in charge of the above basic unit. A gang is under the general supervision and control of the Permanent Way Inspector (hereafter called PWI) and his assistant, the Assistant Permanent Way Inspector (hereafter called APWI). A beat is assigned

to each gang. The length of this beat is usually 6.5 kilometres on single-line 3.25 kilometres on double-line and still less in a multiple track. Gangmen are usually recruited from local sources. No educational qualifications or trade tests are prescribed for them. The basic requirement for recruitment is the physical fitness of the candidate. Though a candidate is not required to be literate, all things being equal, a literate candidate is preferred to an illiterate one. Gangmen are usually provided with quarters known as gang chawls. As a general rule, these chawls are situated within gang beats, though there are cases where they are situated outside such beats. A gangman, not provided with accommodation in gang chawls resides in a nearby village. A gang always operates with tools. These tools are kept in a tool box. This tool box is usually housed in the gang chawl or, if there is no such chawl, it is kept at a nearby village or nearby railway gate and, in a few cases, even outside the gang beat. A gangmate is in charge of a tool box. A gangman reports for duty at the tool box and his duty begins from the time he so reports and ends when he hands back the tools to the gangmate at the tool box. The duty hours for summer and winter are different. In summer, the duty hours are from 7 to 11-30 and 14-30 to 18-30 or 7 to 12 and 14-30 to 18. In winter, the duty hours are from 7-30 to 12 and 13 to 17. After a gang reports for duty at the tool box, the gangmate distributes the tools to the gangmen according to the requirements of the day. Thereafter the keyman goes out to the beat inspecting on foot the gang length from one end to another and the gangmen and the gangmate move to a selected place where the day's operations are to be performed. The operations which a gang performs are broadly as follows : (1) through packing, (2) overhauling, (3) realignment of curves, (4) casual renewals of sleepers, rails, points and crossings, (5) programmed renewals of sleepers, rails, points and crossings, (6) pulling back creeps, (7) lifting track, (8) deep screening, and (9) working of dip lorries. Some of these operations are performed daily or regularly and some others either periodically or even occasionally. Rule 602 of the Indian Railways Ways and Works Manual (hereafter called the Works Manual) prescribes that the annual programme of regular track maintenance and works incidental thereto shall be based on Annexure I thereto with such variations to suit local conditions as may be specified by a Chief Engineer. This annual programme prescribes the attention to be paid for regular track maintenance during three different periods described as (1) post-monsoon, (2) pre-monsoon, and (3) monsoon. The post-monsoon attention is for a period of six months and, according to the evidence of witness Ramji Lal, it is divided into two parts on Western Railway. During the first part beginning

from 15th October and ending with 15th December, the operation of through packing is gone through from one end of beat to another. During the second part from 16th December to 31st March, according to witness Ramji Lal, four to five days in a week are allotted for through packing and the remaining days for what the witness describes as slight packing, or four to five days in a week are allotted for overhauling and the remaining days are allotted for paying attention to bridge approaches, level crossings, points and crossings. According to the witness, realignment of curves is done during this period only as also deep screening as and when the same is required to be done. During the second period which is from April to July, the work prescribed differs according as monsoon is heavy or is not heavy in the area where the track is situated. A monsoon is said to be heavy when the annual rainfall is above thirty inches and to be not heavy when it is thirty inches or less. In heavy-monsoon track region, during this period, four to five days in a week are devoted to through packing and the remaining days are devoted to cleaning of side and catch-water drains, earth work and repair to cess. In non-heavy-monsoon track region, four to five days in a week are devoted for through packing and the remaining days are devoted to cleaning of side and catch-water drains, earth work, repair to cess and picking up of slacks. During the third period from August to the middle of October, four to five days in a week are devoted to picking up of slacks and catch-water drains and for clearance of water-ways on bridges. Spot renewals of rails and sleepers are also done during this period. In heavy-monsoon regions, gangmen are also assigned patrol duties when there are incessant rains. Track is inspected once in a week by PWI and twice or thrice in a week by APWI and once in a week by gangmate. As already stated keyman inspects track daily. However, keyman does not inspect track on the day on which a gangmate does it or on the day when he does the work of a gangmate when the latter is absent or on leave. PWI also inspects track twice in a month—once by foot-plate and once by rear window. APWI also inspects track thrice in a month by foot-plate. However though the rule prescribes the programme as aforesaid, a gangmate has to work under the guidance of his superior officers. The work which a gangmate assigns to his gangmen and the quantum of the work which he exacts each day from them depends upon instructions which gangmate receives from his superior officers or instructions given to him in his diary or gang-chart though gangmate has power even to deviate from such instructions if he notices a defect in a track which, in his opinion, requires to be immediately attended to by suspending the mandated work.

History of Pay-scales

7.6. At this stage, it will be convenient to mention a few preliminary facts which may be necessary to be borne in mind when considering merits or demerits of claims made by the Federation. Prior to the appointment of the First Pay Commission, different railways used to have different pay-scales for their gangmen, keymen, trolleyman and gang-

recommendation in regard to pay-scales of the above railway servants. It, however, stated that the Class IV staff should be fitted into one of the three scales of Rs. 30-1-35, Rs. 35-1-50 and Rs. 40-1-50-2-60. The lowest of the above scales was meant for unskilled and unlettered servants and the higher two scales were meant for semi-skilled and skilled staffs. In practice, certain other overlapping scales developed in course of time. Unskilled supervisory staff came to be assigned scale of Rs. 35-1-40 and semi-skilled artisan staff came to be given scale of Rs. 35-1-50-2-60. Government allotted to the gangmate scale of Rs. 35-1-60 to the keyman scale of Rs. 35-1-40 and to the head trolleyman scale of Rs. 35-1-40. Thereafter the Railway joint Advisory Committee was appointed. That Committee recommended that the gangmate should be given scale of Rs. 40-60 and the keyman scale of Rs. 35-50. This recommendation was accepted by Government. Before the Second Pay Commission, the gangmen claimed that they should be given a grade of pay higher than that of unskilled workers. They claimed this on the ground that their work was arduous, responsible and operational. This claim was rejected by the Second Pay Commission on the grounds that a gangman's personal responsibility was small, that gangmen worked in a group and under close and continuous supervision of gangmates and superior officers and that the nature of their work was broadly comparable to the nature of work of ordinary labourers. Gangmates claimed before the Second Pay Commission that they should be given a higher rate of pay. They did so on the grounds that their work was responsible and that they were in charge of 18 to 22 gangmen. The Second Pay Commission rejected the claim on the grounds that the average number of gangmen a gangmate supervises is approximately 10 and that, because gangmen work in a group, the supervision of gangmate consists of supervising only one operation. The Second Pay Commission fixed pay scale of gangmate at Rs. 80-1-85-2-95-EB-3-110. That Commission also rejected keymen's claim for a higher scale of pay. They did so on the grounds that a keyman's beat covered four miles only, that he had merely to examine railway track, to attend to apparent defects and, if they were of a serious nature, bring them to the notice of appropriate authorities. The Commission held that the level of skill required for performance of duties of keymen was not that of a skilled artisan. The Second Pay Commission recommended scale of Rs. 75-1-85-EB-2-89 for head trolleyman on the ground that his duties were of a more responsible nature than those of an unskilled worker. Gangmen had claimed before the Adjudicator that they should be classified as Intensive workers. The adjudicator rejected that claim on the grounds that, though the work done by gangmen was strenuous in character, having regard to the quantum of work which they had to do, (1) they were able to adjust intensity of their work, (2) they were able to enjoy periods of relaxation, (3) they work under not too strict supervision and (4) that intensity of their work is lessened by a break in the middle of duty hours. The Adjudicator, however, recommended that duty of a gangman, a keyman or a gangmate should be taken to begin from the time he reports for duty at tool box and to end at the time he returns to tool box after the day's

work. This recommendation was accepted by Government.

7.7. The First Pay Commission observed that Class III staff should comprise not only of persons with literary qualifications but also skilled artisans. Therefore, Government gave the same initial scale to clerks and skilled artisans. However, differences soon arose as to which type of skill should be equated with work of clerks on account of the fact that there was a wide variety of skills. Therefore, the Railway Workers Classification Tribunal was appointed in 1948. That Tribunal classified all artisan jobs as skilled and semi-skilled. The Railway Board accepted the classification and laid down trade tests in each case for determining whether a worker was skilled or semi-skilled.

Origin of demand for Arduous Duty allowance

7.8. The Second Pay Commission considered the case of workshop staff whose work was comparable to work done by a category of workers under the Ministry of Defence described as unskilled special category. The Commission found that the above posts in the Ministry of Defence were given a scale intermediate between those for unskilled and semi-skilled on the ground that their work was "particularly heavy or involved handling of dirty materials or machines or explosives." The Commission concluded that workers in other Government factories and workshops whose work was of the same kind as that of above workers in the Ministry of Defence should be treated on a par with them. However, it did not recommend a special scale of pay but, instead, recommended that whilst incumbents under the Ministry of Defence might be suitably fitted in the standard scale recommended by them for unskilled staff, "the additional remuneration in future should be in the form of special pay of Rs. 3/- per mensem" for workers whose work is "exceptionally heavy or whose normal duties involve special processes such as those of chemical process workers or of employees who have to handle explosives." The Railway Board accepted the above recommendation of the Commission, but whilst implementing it, it extended the special allowance also to those workers who performed dirty work. Thus, the Board has accepted the policy of paying arduous duty allowance to workers whose work is (1) particularly or exceptionally heavy, (2) risky, or (3) dirty. The workers who are being given the benefit of the above decision of the Railway Board are enumerated in Annexure II of the Railway Board's Reply.

Connotation of Arduousness

7.9. Having regard to the ground on which the claim of gangmen is based, the only question which requires to be decided in Term No. 6 is whether tasks performed by gangmen are arduous or not. The term "arduousness" is not defined anywhere. Neither side has attempted to submit any definition for consideration. The Railway Board, however, has accepted, for payment of arduous allowance, the concept of "arduous work" as described by the Second Pay S/1 RB/72—23.

Commission with reference to the posts under the Ministry of Defence. Therefore, the Railway Board has contested the claim of the Federation on the ground that tasks performed by gangmen are neither exceptionally or particularly heavy nor risky nor dirty. Mr. Kulkarni does not contend that work rendered by gangmen is either risky or dirty in character. Therefore, Mr. Mahadevan contends that the main question for decision in the Sixth Term of Reference is whether work performed by a gangman is exceptionally or particularly heavy. Mr. Kulkarni does not accept this position. He contends that the above Term of Reference is not based on an acceptance of the above description of arduous nature of work. He contends that, in order that work may be arduous, it is neither necessary that it should be exceptionally heavy nor, as the Second Pay Commission has at another place mentioned, particularly heavy. He contends that the claim of the workers is based on the submission that the work of a gangman is arduous and submits that the claim must be decided one way or the other on the basis as to whether such work is or is not arduous as understood in ordinary parlance. Therefore, Mr. Kulkarni relies upon the definitions of the word "arduous" as given in certain standard dictionaries and does not choose to rely upon the description of the same term as given in the Second Pay Commission's Report. Alternatively, Mr. Kulkarni contends that, even if his above submission is not accepted, work performed by a gangman, taken as a whole, is exceptionally or particularly heavy and, therefore, satisfies even the test laid down by the Commission and accepted by the Board. At this stage, I do not propose to comment upon the apparent infirmity in the case of the Federation if the work does not turn out to be of the kind mentioned by the Second Pay Commission. It is obvious that, if it is not so, then, a new category for granting an allowance to unskilled workers will have to be created. In that case, the question cannot be answered without understanding its implications, specially without knowing all the categories of workers, who satisfy the test of arduousness as understood in its dictionary sense. This is apart from the question as to whether payment of any allowance is permissible at all on the ground that it is arduous in the dictionary sense. However, I do not propose to say anything on this aspect of the matter at present because, in my opinion, that aspect will assume importance only if the alternative submission of Mr. Kulkarni is not accepted, namely, that work is arduous in the sense that it is particularly or exceptionally heavy. No criteria have been suggested by either side as to what makes a heavy work exceptionally or particularly heavy, nor have any materials or evidence been placed with reference to duties performed by workers who are being paid such arduous allowance at present. Under the circumstances, both the sides naturally had no recourse left except to leave the matter entirely in the hands of the Tribunal on an assessment of tasks performed by gangmen as to whether work performed by them is or is not exceptionally or particularly heavy.

Nature of work of a gang

7.10. Therefore, in order to answer the problem posed by Term No. 6, it is necessary to understand

the various types of works done by gangmen—their quantum, quality, extent and nature—and the conditions in which those types of works are being done. For this purpose, it is necessary first to mention and understand various operations in detail which are being performed by a gangman, which operations have already been broadly mentioned at the beginning of this chapter.

7.11. (i) From what has been already stated, it is quite clear that the most regular, if not daily, and important operation which a gang performs is the operation known as through packing. That operation involves the following eight sub-operations in the order mentioned below:

- (1) opening the ballast, which sub-operation has sometimes also been described as opening the road;
- (2) inspection of the track and its materials;
- (3) re-spacing and squaring of sleepers;
- (4) gauging the track.
- (5) slewing the track to the correct alignment;
- (6) packing the sleepers;
- (7) re-packing of joint sleepers; and
- (8) boxing and dressing the ballast.

(ii) In the sub-operation of opening the ballast, the ballast is opened out on either side of rail-seats to the specified extent and to a depth of two inches below the packing surface without disturbing the cores under the sleepers. The extent to which ballast is removed differs according to the gauge of the track and also according to the kind of sleepers used in the track. In broad gauge, it is removed from the end of the sleepers 18 inches inside the rail-seat. In metre gauge, it is removed from the end of the sleeper to 14 inches inside the rail-seat and, in narrow gauge, it is removed 10 inches inside the rail-seat from the end of the sleeper. In the case of G.I. Plate or Pot-sleepers, opening-out is to be carried out to the extent of plates or pot or pots to enable packing being done conveniently. The outside ballast is drawn outwards and the ballast inside between the rails is drawn towards the centre, care being taken that the ridge formed in the centre between the rails does not project two inches above the rail level.

(iii) In the sub-operation of inspection of track and its fittings, rails are examined for kinks, underside for corrosion, rail joints for wear on fishing plates and for tightness of fish-bolts and rail-ends for cracks. Sleepers are examined for their condition and soundness, particularly at rail joints. Rail-seats of old steel sleepers are examined for cracks. Dog-spike, and fang bolts of wooden sleepers are examined for their firmness and the condition and firmness of gibs, cotters and keys are examined in the case of C.I. Pot or Plate sleepers. Loose fittings are tightened, broken ones being immediately replaced.

(iv) In the sub-operation of re-spacing and squaring of sleepers, spacing of sleepers on sighting rail

is first checked and correctly chalk-marked. The corresponding marks are then made on the other rail by using a square at every point. According to Rule 622 of the Works Manual, all such sleepers which are out of square are then picked with pick-ends of beaters. Fastenings are then loosened, sleepers levered and squared to correct position. This squaring is done by planting crowbars firmly against the sleepers and pushing it. Rule 622 aforesaid prohibits sleepers from being hammered. Squared sleepers are then re-gauged immediately, fastenings tightened and packing restored.

(v) The sub-operation of gauging is to be done after sleepers are duly squared.

(vi) In the slewing sub-operation, a gangmate takes up a position about 100 to 200 feet away from the starting point of the day's work and guides his men to take up positions at places where slewing is required to be done. Ends of the sleepers, to be slewed are opened out. In the case of CST-9 sleepers; packing is also loosened on one side of both the plates near the ridge. In some cases, core is also necessary to be picked. In most steel sleepers, loosening of core is necessary. After gangmen have taken up positions as directed by mate at the track to be slewed, gangmen plant their crowbars well into the ballast at an angle of not more than 30 degrees from the vertical. Direction for maintaining the above angle is given to prevent lifting of track. Then gangmen push the track to bring it to the correct alignment and, thereafter, do initial packing with beaters.

(vii) In the sub-operation of packing sleepers, after track has been properly aligned and adjusted at the top, gangmen are distributed to pack all sleepers in a systematic manner commencing from one end. Four men deal with every sleeper successively, two at each rail side. Gangmen pack sleepers with ballast by standing back to back and at the same time work beaters diagonally under the rail-seat to ensure firm packing. Gangmen have to break cores thoroughly with pick-ends and then have to use head-ends. This is to be done to ensure uniform packing and to maintain elasticity of road-bed. After packing under the rail-seat is over, gangmen pack each side of the rail-seat from the end of the sleeper to the extent ballast is removed in the first sub-operation. During packing, all gangmen work beaters by lifting them from the same height not above the head so that sleepers are uniformly packed. Gangmate then checks by tapping packing on inside and outside of every rail-seat and gets defective packing, if any, re-attended. After systematic packing is completed, gangmate checks again carefully the alignments of the top and carries out minor adjustments, if necessary. If any sleeper has to be disturbed for the above process, gangmate again gets it repacked.

(viii) In the sub-operation of repacking joint sleepers, gangmen re-pack joint sleepers. Rule 622 of the Works Manual enjoins this process because a rail joint is the weakest portion of a track and, therefore, it is required to be made doubly firm to prevent the track from being slackened.

(ix) The sub-operation of boxing is carried out after all the above operations are over by pulling back clean ballast with a rake and filling it between sleepers along rail-seats. The ballast section then is dressed to the specified dimensions either by a template or a yard-stick. Hemp cord of one-fourth inch diameter is used for lining the top and bottom edges of the ballast section. Cess is then tidied up by removing earth ridging at the edge of a bank if there is one and by maintaining cess to a correct depth below the rail level according to ballast-section-drawings.

7.12. In the through packing operation, one gang opens one rail length of 42 feet per day. The quantity of ballast which a gangman removes from that portion varies from railway to railway, place to place and gauge to gauge. Witness Ramji Lal deposes that a gangman removes on an average 170 cubic feet in steel trays and wooden sleepers and 125 cubic feet in CST-9 sleepers, and the same quantity is packed by him at the end of the day's work. According to the Board's witness, Parthasarthy, ballast provided per foot of track, in the case of BG is 11 to 12 cubic feet, in the case of MG $7\frac{1}{2}$ to 8 cubic feet and in the case of NG 5 cubic feet. Therefore, his evidence is that the quantity of ballast deposed to as being removed by Ramji Lal is not correct. He further deposes that quantities mentioned above are theoretical and that the actuals are less on some trunk lines. He further deposes that all the above ballast is not necessarily removed in through packing and even overhauling. Therefore, the gist of Parthasarthy's evidence is that ballast which can be involved in the above two operations should be much less than that deposed to by witness Ramji Lal. There is some justification for the evidence of Parthasarthy that the whole quantity of ballast is not removed in through packing. This follows from the description of the first sub-operation which I have given above. Though this is so, in my opinion, materials on record are not sufficient to resolve the controversy as to the average amount of ballast which is removed and replaced per day per gangman in through packing operation.

7.13. The number of sleepers in a rail length of 42 feet is different according to the kind of sleeper used. According to the evidence, the average number of sleepers handled by a gangman per day in through packing operation is 17 to 20 and, in the overhauling operation it is 10 sleepers per day, with the solitary exception of Eastern Railway where only 5 sleepers per day are handled by a gangman. There is controversy between witness Ramji Lal and witness Parthasarthy as to the number of sleepers which are re-spaced and squared on each day of through packing operation. According to witness Ramji Lal, percentage of sleepers re-spaced and squared in a through packing operation is 90 to 95. According to Parthasarthy the percentage varies from 5 to 20. In his opinion, if the percentage is as high as 90 to 95, then, there must be something seriously wrong with the track. If what Ramji Lal states represents the truth, then, every time through packing is done, almost every sleeper is being re-spaced and squared. The infirmity in the evidence of Ramji Lal is that his experience is limited to the track on which he has actually worked, whereas Parthasarthy undoubtedly

has a wider range of experience on different tracks where he has had occasion to perform his duties as an Assistant Engineer and also as a Research Officer. According to Parthasarthy, in the trials conducted at Lonawala, to be alluded to hereafter, percentage of sleepers requiring re-spacing and squaring was 19.1. Mr. Kulkarni comments that the section chosen for the above trials cannot be regarded as a representative section in view of the fact that Lonawala track is rocky and trains going up the Ghat are slow in motion. However, in my opinion, whilst this reason may be borne in mind, it is not possible to accept the evidence of Ramji Lal on the broad ground that through packing is done for the major part of a year, and at some places, the turn for through packing comes at intervals of 6 to 7 weeks, and, therefore, there is no likelihood of almost every sleeper being required to be re-spaced and squared in every through packing operation. Under the circumstances, in my opinion, if a track is looked after as mentioned in the programme, the percentage deposed to by Ramji Lal does appear to be exceptionally high. I propose to consider the merits of this case on the basis that the all-India average of sleepers requiring re-spacing and squaring is 20 per cent.

7.14. In the overhauling operation, the ballast is removed two or three inches from the bottom core of a sleeper including haunches. All this ballast is taken to the cess where it is screened by a wire-basket and the screened ballast is taken back to the proper place. According to witness Parthasarthy, the ballast in the bay is pushed to the cess and that in the adjacent bay is taken off with a Phavda, put in a steel basket and removed to the cess. Except that ballast is removed from a greater depth and is also screened, all the rest of the operations which are done at the time of overhauling are the same as are done at the time of through packing operation. Thus, overhauling is an operation which is a combination of through packing and screening. One gangman is given 21 feet length of rail in this operation. The average numbers of sleepers dealt with in this operation per gangman are 10, though according to witness Parthasarthy, on Eastern Railway, the number dealt with is 5 only. According to witness Ramji Lal, the quantity of ballast moved in this operation is 180 to 190 cubic feet per day per man. According to witness Parthasarthy, the quantity is 194 cubic feet. Overhauling is not a daily operation but is periodical. There is conflict of evidence as to what portion of a gang-length is overhauled in the course of a year. The evidence of Ramji Lal is that overhauling operation is done to the extent of 33 to 50% in a year. The evidence of Parthasarthy is that the percentage overhauled is 25 to 33 per cent of the gang-length in a year. I would prefer the evidence of Parthasarthy to the evidence of Ramji Lal, specially as that evidence is corroborated by Rule No. 633 of the Works Manual.

7.15. At this stage, it will be convenient to mention the time devoted to each of the sub-operations involved in through packing. The time taken must necessarily depend upon the number and extent of the defects, the number of sleepers to be re-spaced and squared, and must also vary from place to place and time to time. However, timings given by witness

Parthasarthy are based upon a trial conducted in Lonawala section of Central Railway. The trial was conducted over 0.1 and 0.2 kilometre stretches where there were 146 and 292 sleepers respectively. According to Parthasarthy, the time which was devoted in each of the above sub-operations is borne out in several other trials which were conducted for prospective introduction of an Incentive Scheme. Though witness Parthasarthy was cross-examined by Mr. Kulkarni on the above part of his evidence, Mr. Kulkarni states at the time of arguments that he has no objection if the timings given by witness Parthasarthy on basis of the above trials are taken as fair averages. According to Lonawala trial, opening the ballast takes 80 minutes, respacing and squaring also takes 80 minutes, slewing 30 minutes, packing 190 minutes, repacking 30 minutes, and boxing and dressing 70 minutes. Both the sides are agreed that time devoted for each of the sub-operations is necessary to be taken into account for determining whether any particular sub-operation is or is not by itself arduous or especially arduous.

7.16. It is also necessary at this stage to mention the tools and instruments which a gang carries, their number and specially their weight. This is important because the Federation attempts to prove that a gang has not only to work daily with heavy tools and instruments but that it has to carry those tools and instruments to and for the tool box every day. However, unfortunately, on this topic there has been conflict of evidence and considerable time was taken by both sides, not only in examining their respective witnesses on the subject, but also in addressing the Tribunal at the time of arguments.

7.17. The weight of evidence is that a tool box contains the following main tools :

- (1) Beater-steel.
- (2) Phawda or shovel.
- (3) Rake ballast.
- (4) Basket steel.
- (5) Crowbar.
- (6) Wire basket.
- (8) Hammer spiking.
- (8) Hammer key.
- (9) Spanners.
- (10) Rail tongs.
- (11) Jim crow.

A tool box also contains a number of articles some of which are kept to enable a gang to take protective and safety measures. Amongst these miscellaneous articles are :—

- (1) Rope.

- (2) Gang number board.
- (3) Tin box with 12 detonators.
- (4) Banner flags.
- (5) Hand signal flags.
- (6) Tin box containing muster sheet, gang chart and rule books.
- (7) Works disposal book.
- (8) First aid box.
- (9) Augur carpenter.
- (10) Chisel.
- (11) Axe.
- (12) Adze
- (13) Straight Edge.
- (14) Square steel, and
- (15) Square wooden.

In addition to these, a gang also carries a bucket and also a drum for storing water at places where water is not easily available at the site of the work. There is no dispute that a tool box contains the above-mentioned tools and instruments. The dispute is as to how many of these instruments a gang carries for its various operations. Probably, there is no dispute as to for which operations some of the above tools are necessary to be carried. For example, it is common ground that a wire basket is carried only at the time of overhauling operation and that a jim crow is carried only when de-kinking has got to be done. There is also no dispute that almost all the items included in the miscellaneous items are meant for a gang as a whole and, therefore, except banner and hand signal flags, a tool box contains one item of each kind mentioned in the miscellaneous items. The number of banner flags is 2 and hand signals flags also the same. The main dispute appears to be as to how many of the other items are in a tool box and what their weights are. The two experts have agreed that there are as many beaters-steel as there are gangmen but the controversy is in regard to other tools. According to witness Ramji Lal, a tool box contains one item of these tools for each gangman except crowbars whereas, according to witness Parthasarthy, a tool box contains only half the number of tools for every gangman, so that each tool is meant for not one but two gangmen. As regards crowbars, witness Ramji Lal states that an average gang requires 10 crowbars whereas witness Parthasarthy says that 6 crowbars are enough. The two above witnesses agree as to the weights of some of the above instruments. For example, they agree that a Phawda weighs 2 kilograms, a basket-steel 2.5 kilograms and a wire basket 4 kilograms. I do not propose to discuss the evidence in

regard to all the above matters separately and in detail. In my opinion, it is not necessary to do so. The main purpose of scanning the above evidence is to discover what is the average weight which a gangman carries to the site of work to and fro the tool box. Therefore, in my opinion, it will be enough if I record my broad conclusions on the above controversy. The Railway Board, in its reply, has given a list of tools carried by a gang and their approximate weights. The total weightage given by it is 185.7 kilograms. This is done by it on the basis that a gang consists of 20 gangmen. Since the average number in a gang is 14.3, the Railway Board has given a new statement of weights which has been approximated to a gang of 14 persons. According to this new statement, the total weight which a gangman carries on the day of through packing is 13.3 kilograms and, on the day of overhauling, is 14 kilograms. The above statement gives the number of tools and their weights deposed to by the Board's witness Parthasarthy. His evidence is that the average weight of tools which a gangman carries on the occasion of through packing is 12.4 kilograms and, on the occasion of overhauling, is 15.2 kilograms. Mr. Mahadevan concedes, at the time of arguments, that there is a broad discrepancy as to the weight of the miscellaneous items between the statement of the Board and the evidence of witness Parthasarthy. According to the statement of the Board, the total weight of miscellaneous items is 20 kilograms whereas, according to Parthasarthy, it is only 10 kilograms. Mr. Mahadevan concedes that having regard to this discrepancy, it is but fair that the weight given by witness Parthasarthy should be increased in regard to miscellaneous items from 10 to 20 kilograms. Supplementing the evidence of Parthasarthy in that way, according to Mr. Mahadevan, the total average weight carried by a gangman comes to 13.65 kilograms on the occasion of through packing and 16.45 kilograms on the occasion of overhauling. At the fag-end of his arguments in reply, Mr. Kulkarni accepts the weight as arrived at in the above manner but contends that that weight does not represent the actual weight which a gangman carries. This is for the reason that there is a discrepancy between the evidence of Ramji Lal and Parthasarthy in regard to the number of certain kinds of tools which a gang carries as a whole and the weight of some tools. Therefore, in my opinion, the controversy can be resolved by paying attention as to which of the above two versions is correct in regard to the number and weight of controversial tools. The types of tools in regard to which controversy exists are (1) Phawda or shovel, (2) crowbar, (3) rake ballast, (4) steel basket, (5) template, and (6) spanner. According to witness Parthasarthy, only 7 Phawdas are carried to the site on the occasion of through packing. According to witness Ramji Lal, each gangman carries one Phawda, so that, if a gang consists of 14 gangmen, 14 Phawdas will be carried. Amongst the various sub-operations, Phawda is used for opening ballast. In support of his evidence, Parthasarthy relies upon the List of Standard Track Tools maintained by South Eastern Railway. In that List, the number of Phawdas is given as half the number of gangmen. However, this explanation ignores the item of shovel in the same list against which it is said that each is meant for half a gangman. Now the evidence does not leave any doubt that Phawda and a shovel

are alternative tools. In any case, so far as the sub-operation of opening the ballast is concerned, it is done either with a Phawda or a shovel. Moreover, it is clear from the evidence that each gangman is assigned a track of 42 feet for opening ballast. If each gangman is not armed with either a Phawda or a shovel, half the number of gangmen will remain idle and will not be able to do their work until half the track is opened up. Moreover, it is noteworthy that the list given by the Board in its reply does not mention any shovel at all. The list of tools maintained by Western Railway assigns one Phawda to each gangman. In view of the above facts, I agree with Mr. Kulkarni's submission that each gangman requires either a Phawda or a shovel. On that basis, the weight of half a Phawda per gangman requires to be added to the weight given by Parthasarthy. As regards crowbar, controversy is between 12 and 6 for gang. There is a controversy regarding weight of this tool also. According to the Board's reply, weight of this tool is 8.5 kilograms. Witness Parthasarthy, however, gives its weight as 10 kilograms. The Federation gives in its Statement of Demands weight of a crowbar as 12 kilograms but its witness Ramji Lal gives its weight as 11 kilograms. Therefore, controversy regarding weight of a crowbar is whether it is 10 kilograms or 11 kilograms. A crowbar is used mainly for slewing operations. Parthasarthy admits that the minimum number of crowbars required for any slewing operation are 6. Slewing operations are conducted on both the rails simultaneously. It is admitted that the number of crowbars which would be required would depend upon the amount of slewing which is to be done. Parthasarthy further admits that, in some exceptional cases of slewing, 8 crowbars may be necessary. When confronted with the question as to how a gangmate will be able to decide, when distributing that tool at the tool box, as to how many crowbars will be necessary for slewing operation on any day, Parthasarthy came out with the reply that as the gangmate was fully acquainted with his track, he should be in a position to do so. In my opinion, the reply is not satisfactory. If the number of crowbars is found to be deficient, at the time of slewing, the gangmate and one or more gangmen will have to return to the tool box for obtaining the deficient crowbars, thereby entailing suspension of through packing operation. Moreover, Parthasarthy is not able to deny that the number of crowbars recommended to be maintained in the list of Western Railway is 8. The list of tools maintained by Western Railway includes one more tool described as Bar Claw Steel and number of that tool is mentioned for a gang as 4 for track which has wooden sleepers and 2 for other types of track. In addition to this, it is noteworthy that South Eastern Railway mentions 8 crowbars as the minimum and 12 as the maximum in addition to 2 clawed crowbars. Under the circumstances, in my opinion it will be safe to take 10 crowbars as being required for a gang. As regards the weight of a crowbar, the evidence is that it is about 6 feet long and one and a quarter inches broad or round. Mr. Kulkarni relies upon the weight of such a tool as given in GKW Diary. In that Diary, weight of a 5½-foot long and 1¼-inches round crowbar is mentioned as 10.45 kilograms and that of a 6-foot crowbar as 11.4 kilograms. For square and hectago-

nal crowbars weights are still more. It is not quite clear from the evidence as to whether crowbars which are used on railways are round, square or hexagonal. On the whole, I think it will not be wrong to proceed on the basis that a crowbar weighs about 11 kilograms. The result of this conclusion is that, to the total weight of tools for a gang, as given by the corrected list of Parthasarthy, the weight of 4 crowbars will have to be added and the weight corrected on the basis that a crowbar weighs 11 kilograms. There is also controversy regarding rake ballast. According to the Federation and its witness Ramji Lal, one rake ballast is necessary for each gangman. According to the Board only 6 are necessary for a gang and, according to its witness Parthasarthy, 7 only are necessary. The Board relies upon the list of South Eastern Railway. That list mentions half a rake ballast per gangman. As against this, the list of Western Railway mentions one rake ballast per gangman. The statement discloses that a rake ballast is used not only for the sub-operation of opening ballast but also for dressing the same after the other sub-operations in through packing are over. In that view of the matter, even on the supposition that there is some justification for South Eastern Railway for prescribing half a rake ballast for a gangman, in my opinion, it will be better to presume that a gang will be provided with rakes ballast at the rate of one for each gangman. In that view of the matter, the weight of 7 rakes ballast will have to be added to the weight of the tools per gang. As regards basket steel, controversy has two aspects. One is that, according to the Board, this tool is not necessary at all to be carried for through packing operations. According to the Board, that tool is necessary only for overhauling operations. According to the Federation, basket steel is required for both the above operations. The second aspect of the controversy is regarding its number. According to the Federation and its witness Ramji Lal, one basket steel is necessary for each gangman whereas, according to the Board's reply, the total number required for a gang is 6 and according to Parthasarthy the number required is 7. It is common ground that basket steel is required for carrying ballast away from the site. Mr. Kulkarni contends that basket steel will have to be carried on the occasion of through packing operations if some sub-rules of Rule 622 of the Works Manual are to be respected. For example, he says that, in opening ballast, if ballast removed to the centre is above the prescribed height, then, the excess ballast will have to be carried to the cess (*vide* sub-rule (a) of the above Rule). According to Rule 622(h), if ballast is deficient in a full section, deficiency has to be shown along the centre of the track and not under rails or at shoulders. Mr. Kulkarni contends that to carry out this instruction, basket steel is also necessary. Similarly, he relies upon Rule 622(h)(ii). He says that, in order to maintain the cess at the correct depth below the rail level, basket steel is also necessary. I am not satisfied that a basket steel is necessary for each gangman, in any case, on all occasions of through packing. In my opinion, the purposes relied upon by Mr. Kulkarni can be served by carrying one or two baskets steel for the whole gang. However, there is no doubt whatsoever that this tool is necessary to be carried at the time of overhauling operation. The screening part of that operation contemplates removal of ballast from

the rail track to the cess and from the cess to the rail track. If each gangman is not given a basket steel in this operation, there is a likelihood of the operation being held up and a part of the gang remaining idle. Under the circumstances, in my opinion, the weight of two basket steel needs to be added to the total weight of tools carried for through packing operation and that of five baskets steel needs to be added to the total weight of the tools carried for overhauling operation. As regards template, according to Parthasarthy, a template can take the place of a yard-stick and if the latter is carried, the former is not necessary to be carried. Parthasarthy is supported by Rule 622(h) of the Works Manual inasmuch as it says that either a template or a yard-stick need be used for that operation. Mr. Kulkarni's contention is mainly based on the ground that whereas correct angles can be taken with a template, the same cannot be done with a yard-stick. He refers to the observations of the Railway Accidents Enquiry Committee of 1968, in paras 2.37 and 2.39 of its Report, wherein it has commented upon the fact that correct templates had not been used. The question for consideration is not whether a template can or cannot replace a yard-stick fully but which of the above two tools is furnished to a gang. Under the circumstances, in my opinion, if a yard-stick has been provided for, it is not necessary that the weight of a template should also be included. There is some controversy also regarding the number of spanners carried by a gang. According to Ramji Lal, a gang carries three spanners, whereas according to Parthasarthy, it carries only one normally and two only when-work is to be done in yards. Parthasarthy qualifies the latter statement by saying that a spanner must be a double-edged one. He is not able to say as to how many spanners are actually provided in a tool box. I prefer the evidence of Ramji Lal to that of Parthasarthy on the above subject. Therefore, the weight of 2 spanners will have to be added for a gang in the corrected list of tools furnished by the Board.

7.18. The result of the above discussion is that, in my opinion, the total weight of tools required to be carried on occasions of through packing operation and overhauling operation is 279.9 kilograms and 328.4 kilograms respectively, so that, in a gang of 14 the average weight of tools which a gang will be carrying on occasion of through packing operation will be 20 kilograms and on occasion of overhauling operation will be 23.5 kilograms. I may mention that this weight is at best an average. It cannot represent the actual weight which gangmen carry all over the Indian Railways. The tools have not been standardised on the Indian Railways and it is probable that different railways have prescribed tools of different weights for various operations. However, since a great deal of emphasis is laid by Mr. Kulkarni on the above aspect of the matter, I have chosen to consider the above subject rather in detail and propose to consider the claim made on behalf of gangmen on the basis that each gangman has to carry almost every day one of the above two weights from the tool box to the site and *vice versa*.

7.19. In realignment of curves, curves are aligned to a required extent. In this operation, when track

is opened, shoulder ballast is also removed to the extent of the slew, packing cores opened up to rails, fish plates and fittings and sleepers are loosened. The curve is then slewed, initial packing given and the track is packed and dressed. This is not only an important but a heavy operation. It is usually done under the supervision of an APWI or his superior. Usually, the number of crowbars used are twice or more the number of crowbars used in normal slewing and; if necessary, services of extra persons are also requisitioned.

7.20. Renewal of rails, sleepers, points and crossings is of two kinds, casual and programmed. A casual renewal has to be done if, at the time of any of the inspections or operations done on a track, it is discovered that any one of the above things requires replacement. Programmed renewal takes place when the programme requires that sleepers, rails, crossings and points in a track or part thereof should be replaced. Casual renewal may require only a Caution Order. A programmed renewal may require either a Caution Order or a Full Block. In these operations, rails and sleepers are taken to the site in dip lorries and if casual renewal is only of a sleeper, it may be carried by a group of four gangmen on the site. The evidence is that one rail of 42 feet length weighs about half a tonne and one wooden sleeper weighs about 30 kilograms. In these operations, fittings are removed, ballast is opened out and also removed, packing under sleeper is broken, sleeper or rail or both are placed by the side of sleeper or rail which requires to be removed and after removing old rail or sleeper, new rail or sleeper is replaced and thereafter all operations required to be undergone in through packing or overhauling have got to be gone through. There is no dispute regarding the procedure followed for this operation. However, in the case of casual renewal, presence of P.W. Mistry, and in the case of programmed renewal, presence of a PWI or his Assistant, is necessary, specially if renewal is to take place on bridges. As regards the extent of renewal, in the case of casual renewal, it will depend upon the general condition of a track, its materials and fittings. As regards programmed renewals, according to witness Parthasarthy, the average renewal of rails, based upon average of last four years, is 26,000 tonnes for all the Indian Railways, so that, the average renewal is 2½ tonnes per gang per year of five rails of 90 lbs. or ten rails of 41 lbs. and that the average renewal of sleepers, based also on average of four years, is sixteen lac, so that, the average number of sleepers renewed on all the Indian railways is 160 per gang per year. Similarly, Parthasarthy deposes, on the basis of average of six years, that the total renewals of points and crossings is 3,300, so that a gang is, on an average, called upon to renew a point or crossing once in three years. However, the above average does not give a correct idea of the full amount of programmed renewal work which is done on the Indian railways. Parthasarthy admits that worn-out points and crossings are reconstituted either on track or in Engineering Workshops. He also admits that reconstituted rails, sleepers and points and crossings brought from workshops involve the same labour as the new ones brought from stores. No average is available in regard to rails, sleepers, points and crossings reconstituted. However, Mr. Mahadevan says that it will

not be far wrong to proceed on the basis that the number of reconstituted articles is of the same order as the number renewed with the aid of new rails, sleepers, points and crossings.

7.21. A creep takes place when one end of a rail shifts towards the end of its joint. This happens on account of the impact which the dominant traffic exerts on a rail in a particular direction. A creep is regarded to be a major defect and requires to be attended to without loss of time. The operation by which a creep is removed is known as the operation of pulling back the creep. In this operation, fish plates are opened, fittings of wooden sleepers are loosened or keys of one side of metal sleepers are removed and then the creep is pulled back in the required direction with the aid of rail tongs which are usually six to eight in number. A creep that may be required to be pulled back may be that of a 42 feet rail or, in the case of a welded track, the maximum length of the rail may be of the order of 210 feet. Whilst this operation is going on, the rail is simultaneously tightened. This is also a major and a heavy operation. If the rail affected is a 42 feet rail, only one gang is required but the number of gangmen increases with the length of the rail. In the case of welded track, the number of gangmen employed is as high as 50 in a 210 feet rail. According to Ramji Lal, full force has got to be used in order to pull back a creep. This has not been specifically denied by Parthasarthy. However, that witness deposes that there is another way of pulling back a creep which saves the effort involved in the use of rail tongs. According to Parthasarthy, on some railways, pulling back of a creep is done by inserting crowbars in the joint of two rails and pushing the creped rail in the requisite direction. However, though the witness says that this saves effort, he does not give any idea as to what economy of labour or effort is achieved by this method. In any case, it is noteworthy that the witness does not allege that the above method is in use on all railways.

7.22. Deep screening involves almost the same operations as are involved in overhauling except that ballast that is removed and screened is over a greater depth and over a greater width. According to witness Ramji Lal, this operation takes place once in four or five years in a gang-length whereas, according to witness Parthasarthy, the operation takes place at intervals of 12 to 15 years only or at time of track renewals. The witness explains that the operation is not undertaken at shorter intervals because it (1) involves expenditure, and (2) requires imposition of restrictions on speed of trains both during and for some time after completion of the operation. Having regard to the depth of the track which is treated and the quantity of the ballast which is removed and screened in this operation, it is quite clear that the effort which is involved in this operation is greater than the effort which is involved in overhauling.

7.23. Dip lorries are employed for carrying materials for casual renewals of rails and sleepers although evidence of Parthasarthy is that one or two sleepers may not need a dip lorry as such a number can be carried by gangmen whose number will be three to four for one BG sleeper. Witness Ramji

Lal deposes that dip lorries are used on an average once in a month in a gang-length. According to witness Parthasarthy, having regard to the statistics of renewals which he has given, dip lorries need be employed only for four or five days in a year for a gang. He further deposes that, on some railways, departmental material trains are also used where there are rails to be carried. According to both the witnesses, gangmen do not sit idle when they have to wait for clearance of dip lorries. According to Ramji Lal, track maintenance work is done by them whereas, according to Parthasarthy, gangmen are entrusted only with such minor operations as weeding and cleaning of yards. Dip lorries have first to be loaded at stations, the loading being done by gangmen. Having regard to the average weight of rails and sleepers, this is a heavy type of work according to the Federation. Dip lorry usually carries about ten tonnes of materials. This heavily loaded dip lorry has then to be pushed to the site of the beat where the renewal operations have got to be done. This pushing is done by gangmen with their hands and, in difficult beats, one or more gangmen may have to be assigned look-out duties. If a track has got to be cleared for any passing trains in the meantime, dip lorry has not only to be unloaded but taken off the track and then, again it is to be put on the track and reloaded. Then, at site of work, dip lorry is unloaded and, thereafter, it is pushed back to the station in the same fashion after loading and unloading the released rails and sleepers. Dip lorry is worked under the direct supervision of a P.W. Mistry or a higher official.

7.24. (i) In addition to the above operations, a gang has also to do certain other operations which have been mentioned in the Works Manual in regard to some of which evidence has been tendered. These operations may be shortly mentioned. When longitudinal cross levels and alignments go wrong, that is, when a track sinks to a yielding bed, the track is lifted and slacks are removed. In this operation, all sub-operations of through packing are gone through except the sub-operation of opening the ballast.

(ii) When a rail is fractured, in the case of minor fracture, it is repaired and, if the mate feels confident that a train can safely pass through, he allows the train to pass. Otherwise, or in the case of a major fracture, he takes measures to stop trains and for informing higher authorities.

(iii) In monsoon, specially during heavy rains, storms and gales, a gang has to perform special duties. The normal work is suspended and each gangman is assigned the duty of patrolling the track, to see that the same is not affected by rains, that the water level has not gone beyond the danger level at bridges, that flow of water is not blocked at any place on a bridge and that water level is equal on both sides of river bank.

(iv) When a train is about to pass the site of work, gangmen go to the cess and stand in a line on both sides and watch the behaviour of the track with a view to finding whether there are any spots in the track which affect smooth and even running of trains.

(v) If a mate or a gangman notices parting of a train, the mate or the gangman has to take immediate measures by showing proper signals to inform Driver or Guard about the train having parted. According to witness Parthasarthy, the average number of train partings per year is about 700 in India. However, according to witness Ramji Lal, a gang has to deal with cases of such train partings once or twice in a year.

(vi) If a mate or a gangman notices any obstruction in or serious defect in a track, which will make it unsafe for any train to pass, he has to undertake certain measures such as planting a danger signal, fixing detonators on both sides of the affected track and show signal at the site of the danger. According to witness Ramji Lal, such protective measures have got to be taken for safety of traffic once in every two months.

(vii) If a fire is noticed on train, then, it is also the duty of a gangman to give information about the same by appropriate signals. Witness Ramji Lal deposes that such cases have got to be handled once in three months. According to witness Parthasarthy, the average number of fire accidents which took place on BG and MG railways before 1963 was 300 per year. According to him, the definition of a "fire in train" has been changed since 1963. However, this change is of no significance inasmuch as whether a fire does or does not fall within the old or (i) the new definition, a gangman was and is required to take measures for informing Driver and Guard by appropriate signals.

7.25. According to witness Ramji Lal, a gangman is required to know (i) rules for protection of track in the case of obstruction thereon or defect therein, (ii) rules for action to be taken when a train has parted or when a fire is noticed in axle box of a wheel and (iii) rules prescribed for trolley-men and for gatemen. As already stated, posts of gangmen, gatemen and trolley-men are interchangeable. Among the duties of gatemen are to see that gate leaves, catches and stoppers of level crossings are functioning properly, to maintain track in the vicinity, specially check rails, in proper and fit condition; to keep road surface at level crossings and level crossings properly watered and rammed if necessary and to dress up ballast and remove vegetation upto two telegraph posts on either side. Controversy has been raised as to whether a gangman is or is not required to know the above rules. According to witness Ramji Lal, they are so required. According to Parthasarthy, they are not required to know the above rules but only to be acquainted with the procedures in regard to them. In my opinion, this controversy is of no importance. If what is meant to be conveyed is that a gangman is not required to have a bookish knowledge of those rules in the sense that he should be able to quote the rules in question and the books in which they are to be found in railway literature, Parthasarthy is right but there is no doubt that such is not the contention of the Federation. The Federation's case is that, if and when any of the various things detailed in the aforesaid rules takes place, a gangman is required to act in the manner directed in those rules. The rules have been designed primarily for the purpose of

preventing accidents and ensuring safe and smooth passage of trains. It is quite clear that actions which have been enumerated in rules are all meant to be taken by gangmates, keymen and/or gangmen if and when defects which can cause an obstruction in smooth and safe running of train takes place or can cause a disaster. Unless a higher official is present on that part of the track where a defect is discovered, it is quite clear that the safety of trains will entirely depend upon actions which are required to be taken by a gang or its constituents and I have no doubt whatsoever that railway administrations do expect and require their gangs and their constituents to take adequate measures for the purpose. If they do not do so, disasters would inevitably result, involving considerable loss of life and property. Under the circumstances, I have no doubt whatsoever that the Federation's contention is right that gangs and their constituents are required to be acquainted with rules which have been laid down by railway administrations and actions to be taken when defects are noticed.

Arduousness or otherwise of a gangman's work

7.26. That brings me to the crucial question in the Sixth Term of Reference which I have already mentioned at the beginning of this chapter. That crucial question is whether the tasks performed by a gangman are or are not arduous. It will at once be noticed that for reaching a decision on the subject, some of the facts which have been brought on record by both sides are totally irrelevant. These facts relate to such questions as to whether a gangman is or is not required to undergo a refresher course, as to whether he is or is not required to be acquainted with various rules relating to his job for protection of track, whether work which he performs is or is not semi-skilled, whether work which he performs is or is not of a responsible nature and whether safe and smooth passage of trains is or is not dependent upon his knowledge, experience and ability to carry out the operations involved in track maintenance. All these questions may be relevant if the demand were for a revision of pay scale of a gangman but that is not the question which is posed. Therefore, I am not called upon to touch the above facts and to evaluate them for the purpose of determining whether the pay packet which a gangman gets is commensurate with duties which he discharges and responsibilities which he carries. The question posed is a simple one and that is, whether, on an assessment of the tasks, which a gangman performs during the course of his duties, they are of such a nature that, either on the principles enunciated by the Second Pay Commission in regard to some categories of railway servants or, on some other principles, they deserve payment of a special allowance to remunerate them for arduousness, if any, involved in their duty. The question may be considered in two parts. Firstly, each one of the operations which a gangman performs either daily or for substantial periods of time, may be considered with a view to evaluating as to whether that operation is arduous or not. If all the tasks are arduous, then, there cannot be any doubt that gangmen deserve payment of the allowance. If, on the other hand, none of the tasks is arduous, then, he does not deserve the allowance.

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On the other hand, if some tasks are arduous and others not, then, the totality of the tasks which are arduous, together with their nature, incidence, frequency and conditions, atmospheric or otherwise, in which they are performed, etc., will have to be considered with a view to determining whether the performance as a whole is or is not of an arduous nature. It is quite obvious that tasks should not be considered in isolation. They have to be considered in the context of such facts as atmospheric conditions, in which they have to be performed, weight of tools which gangmen have to carry and handle, and seasons in which they have to be handled and such other allied considerations.

7.27. From the facts narrated above, it is crystal clear that, of all the operations performed by a gangman, the most frequent operation is that of through packing. Not only this, but, even in the performance of some other operations, this operation is more or less always involved. Therefore, one of the important facts to be decided in this case is whether that operation is or is not arduous in nature. It will also be noticed that there are some operations which are not of daily or even frequent occurrence and are indeed either periodical or even rare. The impact of these operations on a gangman's work as a whole will have also to be considered especially if through packing and other allied operations are found not to be arduous in nature.

7.28. Unfortunately, two experts who have otherwise given detailed and valuable evidence have not thrown much light on the above crucial subject. On the contrary, the evidence given by Ramji Lal is such that it is open to criticism that, according to him, only four operations involve heavy work, implying thereby that others do not involve such work. In the beginning of his evidence, witness Ramji Lal, after mentioning ten operations, mentions only two of them as involving heavy work. The ten operations mentioned by him are really three in number, namely, (1) through packing, (2) overhauling and (3) renewal of permanent way materials. After mentioning these three kinds of operations, the witness says "slewing and realignment of curves involves heavy work." Having said so, the witness proceeds further to say, "pulling back the creep, working of material lorries, loading and unloading of permanent way materials" are also heavy. In the context in which the above evidence is given, the inference is irresistible that, in the opinion of the witness, the other operations do not involve heavy work. According to witness Parthasarthy, much physical effort is not involved in the following operations: (1) walking to site of work, even though he is carrying 13 kilograms, all throughout the year, (2) measuring level or gauge, (3) weeding when done by hand, as when ballast is cleared, (4) gauging and (5) examination of fittings. It will be noticed that three of the operations deposed to by witness Parthasarthy are not those done by gangmen. They are done by a gangmate, namely, (1) measuring level or gauge, (2) gauging and (3) examination of fittings. However, both witnesses have given some general evidence which must also be considered. For example, witness Ramji Lal says that all and sundry cannot do the work of a gangman because it

involves (1) heavy manual work, (2) skill gathered by experience, (3) potable water being not available and (4) one gangman being exclusively assigned the duty of fetching water and therefore the work of that gangman being carried out by others. It is quite clear that the second reason given by the witness, namely, skill gathered by experience, is not of any consequence on the subject of arduousness. As regards one gangman being assigned the duty of fetching water, undoubtedly, it may be a factor which may have to be considered. But, in my opinion, that factor is not necessarily of universal application, nor is that factor of such importance as to outweigh any conclusion one may reach on merits of various operations. As already stated, the Lobo Formula for determining the strength of a gang does not take into account the fact that a gangman may have to be assigned the duty of fetching water. I can see the force in the argument that, if one gangman is engaged wholly or for the greater part of the day in fetching of water to and fro and if his work has got to be shared by other gangmen, then, such a gang has a distinct disadvantage against a gang where such work is not done. But, even then, in my opinion, the fact will remain that, what the other gangmen will be doing during the course of their hours of work will be the same type of work which a gang otherwise performs, though the quantum may be more. It is also true that, where a gangman is exclusively or for long periods assigned duty of fetching water, it is a fit case for increasing gang-strength in such a beat, but, all the same, in my opinion, the difference in gang-strength cannot have any appreciable effect on the question of arduousness especially if one bears in mind the average quantity of ballast which a gangman deals with daily as given by the Federation's witness Ramji Lal. It is noteworthy that witness Ramji Lal does not say that non-availability of potable water makes a task, which is otherwise light, arduous. He only gives non-availability of potable water as one of the reasons why all and sundry cannot do the work of a gangman. Therefore, ultimately, one is left only with that part of the evidence of witness Ramji Lal wherein he states that the work of a gangman is heavy. As against the above evidence, Parthasarthy states in regard to some of the operations that they do not involve much physical effort and, in regard to totality of operations, the witness states, in a general way, that work done by a gangman involves less physical effort than what is involved in the work of an earth-mover and that his work is not more difficult than that of a hamal in the goods shed. Though the evidence given by Ramji Lal is unsatisfactory and even unhelpful to the Federation, I do not propose to pin down the Federation to the deficiencies in the evidence of Ramji Lal. I do not propose to do so, because obviously, there is at least one operation, namely, that of deep screening which, even according to the Railway Board, involves heavy work but which operation has been omitted to be mentioned as such by Ramji Lal. I may also mention that though Parthasarthy states that overhauling does not involve much physical effort, Mr. Mahadevan is fair enough to concede that it is strenuous work, although he clarifies it by further stating that it is not particularly or exceptionally heavy. Ramji Lal omits to mention overhauling operation as heavy. Under the above circumstances,

I have thought it proper to consider in somewhat detail the arguments of Mr. Kulkarni directed to put forward an eloquent plea that a gangman works under such adverse circumstances that his work cannot but be exceptionally heavy and that there is no category of persons in the gamut of railway servants who does as much physical labour under severe and adverse circumstances as a gangman does.

7.29. In my opinion, there is no doubt that some operations which a gang does are heavy. These are, (1) slewing and realignment of curves, (2) pulling back creep, (3) working of dip lorries, (4) loading and unloading of permanent way materials and (5) deep screening. It is noteworthy that no attempt has been made by the Railway Board to challenge, in the evidence of Parthasarthy, the evidence of Ramji Lal in regard to the first four operations. Though this is so, all the above operations are either periodical or infrequent or even rare. Working of dip lorries takes place, according to Ramji Lal, once in a month. Parthasarthy's evidence that the incidence is four or five days in a year, omits to consider the fact that rails, sleepers, points and crossings, reconstituted in workshops, have to be carried to sites of work in dip lorries. Therefore, the evidence of Ramji Lal as to the incidence of the working of dip lorries may be taken as correct. There is no evidence relating to incidence of the operation of slewing and realignment of curves and pulling back creep. It is quite clear that the first will be necessary only where a curve or curves are situated in a gang-length and the operation of pulling back creep will depend upon the number of creeps developed in a track of 6.5 kilometres. Even granting that the latter operation may be necessary, it cannot be, having regard to the fact that a track is constantly watched and maintained, of frequent occurrence specially where the traffic is medium or light. In any case, the operation of deep screening is occasional or rare. Even if deep screening takes place every two or three years as deposed to by Ramji Lal, the frequency of such operation cannot be regarded as great. Apart from the above facts, the most important consideration in regard to the first four operations is that they are not done by individual gangman but are done by a gang working as a whole or in a batch. Not only this but evidence is that, in some of the above operations, extra gangmen are employed as and when necessary. Therefore, though the fact may have to be borne in mind that a gangman has to do, in the course of a year or a month, all or some of the above operations, the final conclusion must, in my opinion, depend largely on the view which one takes of the regular operations of through packing and overhauling alone or in the context of the other circumstances which I have mentioned earlier as worthy of being taken into account. I now proceed to consider the arduousness or otherwise involved in the various sub-operations of through packing and overhauling in the order in which they were mentioned by Mr. Kulkarni. Before doing so, I propose to consider a few general arguments with which Mr. Kulkarni prefaced his final submissions.

7.30. One of the relevant qualifications for recruitment of a gangman is that he should be physically

fit. The medical rules require the medical officers to be satisfied that recruits will be able to perform their duties sufficiently well. However, there is nothing either in the rules relating to qualifications or in the instructions issued to the medical officers which suggests that a gangman's work is arduous in the sense the Second Pay Commission used the term, nor do rules require recruitment officers to ensure or instructions enjoin on medical officers to see that recruits will be able to undertake particularly or exceptionally heavy work. The mere fact that medical instructions bracket a hamal and a gangman does not mean that, in the opinion of the Board, physical fitness for both is required to be of the same kind. However, even assuming this to be so, the question cannot be resolved unless the nature of the job of a hamal is also analysed. There is some evidence on the latter subject. According to witness Parthasarthy, work which a gangman does is not more difficult than that of a hamal. The mere fact that a hamal works in goods shed whereas a gangman has to work in the open all the year round does not, in my opinion, make much difference. One of the factors emphasized by Mr. Kulkarni is that a gangman has got to work in the open, and day-in and day-out. He contends that this is an unusual feature of a gangman's service and is not to be found anywhere else even on railways. According to him, some other comparable categories have chances of taking shelter under roofs during inclement weather. However, in my opinion, it is impossible to base any conclusion on the above consideration without bearing in mind that arduousness or otherwise of a job must be related not only to that fact but also to the periods for which it is done under such conditions and the work that is actually performed in those periods. In this connection, it is noteworthy that all seasons are not inclement, nor are all hours of an inclement season such. For example, whilst it may be unpleasant to work during hot hours in summer, it may not be so either in the morning or the evening of a summer day. In some cases, it may even be pleasant to work during such a morning or the evening. Similarly, whilst it may be irksome to work on a wintry morning, it may be pleasant to do so in the forenoon and not unpleasant in the afternoon. It is true that rains cause unpleasantness but, even during the monsoon season, rains do not fall all the time. A great deal depends also upon the amount of rain-fall in a particular region and the quantity which falls at a particular time. It may be assumed that work is unpleasant during incessant rains or storms or gales. That is a factor which may be borne in mind whilst considering the total quantum of work and the kind of operations which a gangman is required to perform. Another factor which Mr. Kulkarni emphasizes is that work of a gangman begins by carrying a heavy load from tool box to site of work and ends with the same process. I have reached the conclusion that a gangman carries on an average 20 kilograms of tools on the day of through packing and 23.5 kilograms on the day of overhauling. I will assume that the load is heavy. But, in considering the total physical effort which may be necessary for the above purpose, one has got to bear in mind distance from which a gangman has to carry load to and fro from time to time. The distance is bound to vary from beat to beat and from day to day, depending upon the work site

and the location of the tool box. Taking into consideration that through packing has got to be done from one end to another in the first part of the First Programme period and either through packing or overhauling in the second part thereof and that the same operation has got to be gone through in the Second Programme period and, further taking into consideration that, in some regions, in the Second Programme period and in almost all regions, in the Third Programme period, packing up of slacks is done, it may be taken as fairly established that through packing is almost a weekly programme and that on the days on which it is not done, overhauling is being done. However, in this connection, it is noticeable that, except the first two months of the first part of the First Programme period, through packing or overhauling is not done every day in a week but it is done only on four or five days and on the remaining days such light work is being done as cleaning sides and catch-water drains, attending to level crossings, bridge approaches, points and crossings. Having regard to the above features, it is probable that operation of through packing will be completed in about seven or eight weeks over the whole gang-length with the result that, the distance of the carriage of tools will differ from time to time. In Lonawala trial, half an hour was consumed for going to and fro the tool box. Therefore, in taking a final view of the matter, one has to bear in mind that tools of above weight have got to be carried on an average 4 kilometres to and fro when doing either of the two operations or for about half an hour every day on an average. But all this time is counted as duty and, having regard to the fact that the rostered hours are as already stated, it may be assumed that the effort which may be involved in carrying to and fro the above weight will save an effort which has to be put in at site of the work during rostered hours. Another contention of Mr. Kulkarni is based on the spread-over time of a gangman's work. During summer, the spread-over is 11 to 11½ hours and during winter it is 9½ hours. Though spread-over is intended to protect a gangman from rigours of summer noon, Mr. Kulkarni contends that that is being done for the benefit of the employer and that, in any case, summer spread-over is too long and winter spread-over is long too. There is some justification for this submission and it has to be borne in mind in the final assessment of a gangman's job.

7.31. So far as eight sub-operations of through packing are concerned, as already indicated, a gangman is not directly concerned with the two of them and a part of third. The sub-operation of inspection of track and its materials and gauging track are the duties of a gangmate as also sub-operation of marking sleepers with a chalk for squaring purposes. I will now see the character of the effort involved in doing other sub-operations.

7.32. (i) Mr. Kulkarni contends that the work of opening ballast requires considerable physical effort, firstly, because heavy tools are used in the operation and, secondly, because mixed and caked ballast has to be removed from below the surface. The tools which are used in this operation are either a Phawda or a shovel and/or a rake ballast and, according

to Ramji Lal, a beater is also necessary for this purpose. However, I am not convinced that ballast to be opened in this sub-operation is caked up or mixed, in any case, to a large extent. The depth upto which a gangman is required to go is two inches below the bottom edge of the sleeper. I accept evidence of Parthasarthy that, having regard to the fact that through packing operations are done frequently and that, even overhauling is done at certain intervals, ballast at this level will be clear rather than mixed. In fact, in Rule 622(a) of the Works Manual, it is enjoined that ballast has got to be opened out on either side of the rail seats ".....without disturbing the cores under the sleepers". Therefore, I am inclined to agree with the opinion expressed by witness Parthasarthy that the effort involved in this sub-operation is less arduous than that required in earth-moving and less difficult than hamal's work. It may be that, in this sub-operation, some effort may be necessary when ballast is removed from the bottom edge of a sleeper where, on account of the pressure of traffic, there may be some caked ballast. But this is not likely to be pronounced, having regard to the fact that through packing is done several times in the course of a year and at intervals of seven or eight weeks.

(ii) Mr. Kulkarni contends with vehemence that both the spacing of sleepers and the squaring require a great effort. According to him, in the spacing sub-operation, cores of sleepers that are out-of-square require to be picked with pick-ends of beaters. Parthasarthy deposes that this is not necessary. According to him, core under a sleeper is not broken except in major respacing operations which are done in presence of higher officers. Parthasarthy does not appear to be right having regard to the mandatory way in which Rule 622(c) of the Works Manual has been framed. However, in this connection, it is noteworthy that witness Ramji Lal does not also go to the extent mentioned in the Rule. He deposes that packing under a sleeper is broken to the extent necessary for the purpose of spacing a sleeper. However, I propose to assume that the contention of Mr. Kulkarni is right that, in the spacing sub-operation, core requires to be picked with the pick-end of a beater. At the time of squaring operation, crowbars require to be planted firmly against a sleeper. Mr. Kulkarni contends that this is a heavy sub-operation too. The argument is based on the fact that a sleeper is part of a rigid frame and that it will require tremendous force for pushing it to its proper position. I do not think this necessarily follows. Having regard to the fact that all the sub-operations are to be performed for setting the track right, it is hardly probable that such force will be allowed to be used as will set the track out of square again. In my opinion, the only effort that is necessary is in planting a crowbar firmly against a sleeper and, having regard to the fact that ballast has already been removed, in my opinion, much effort may not be necessary to undertake the process of pushing a sleeper for squaring it. In my opinion, it is not necessary to use much force in pushing and squaring a sleeper to position. It is true that a great deal must depend upon the amount of squaring which is to be done but, in judging the effort required in both the aforesaid operations, it is necessary to bear in mind that all

twenty sleepers, ballast under which is removed are not required to be respaced or squared but only 20 per cent of them, which means about four in number, so that total amount of effort involved in this sub-operation cannot be much.

(iii) In the slewing sub-operation, ballast is removed from 6 to 8 inches from below the shoulders of sleepers, packing is completely loosened and track is pushed. According to witness Ramji Lal, this has got to be done with force to bring a rail to correct alignment. According to witness Parthasarthy, force is certainly to be used but it is not undue. The tools which are used are crowbars. These crowbars are to be planted well into ballast but at an angle of not more than 30 degrees from vertical. I have accepted the version of the Federation that about 8 to 10 crowbars are used in this operation. Having regard to the fact that, in this sub-operation, whole frame has to be slewed, undoubtedly, force is required to be employed. But in gauging the effort necessary, one has to bear in mind that it is not an individual operation but an operation by a group of gangmen. The direction that the angle of a crowbar is not to be more than 30 degrees is a pointer in the direction of the force which is to be used. Rule 622(d) (ii) gives the reason for this by stating that, if crowbars are planted at a higher angle, "lifting of track will result". Therefore, I prefer evidence of Parthasarthy to that of Ramji Lal on the subject. In fact, Mr. Kulkarni himself accepts that part of the evidence of Parthasarthy but contends that the phrase "undue force" used by the witness is infelicitous and substitutes the phrase "measured and controlled force". It is undoubtedly true that gangmen will have to keep up the lifted track in that condition until the initial packing is done. It may be that, in some cases, some more force may become necessary. Parthasarthy suggests that, in such cases, gangmen will release some of the force by placing their body weight on crowbar and by holding it upright. Mr. Kulkarni pooh-poohs this suggestion. Coming as it does from an expert, I do not think I will be justified in overlooking that evidence unless there is some contradictory material on record. But, even assuming that some greater force may become necessary, as Ramji Lal deposes and Mr. Kulkarni concedes, more than one gangman is put on a crowbar, in my opinion, having regard to the general direction that track should not get lifted up and having regard to the fact that it is a group operation, it cannot be stated that the effort which is necessary to be used in this operation is extraordinarily strenuous or heavy. All that one can say with confidence on the materials is that the effort will be a strenuous one.

(iv) Packing sub-operation is begun by lifting any dip or low joint correctly and then packing adjacent sleepers. After two rails have been attended to in this manner, rails on the other side are brought into correct level by using the straight edge or the spirit level. Then cross level of straight edge and spirit level is checked at every rail joint and at every fourth sleeper. The next two rail lengths are then taken and the same process is gone through. Having thus aligned the track, systematic packing operation takes place. This is a joint operation by four men

who use crowbars, two being posted at each rail seat. The ballast under the sleeper is packed, gangmen standing back-to-back and working beaters diagonally under rail seat. The relevant rule directs that head-ends of beaters should be used after cores have been thoroughly broken as otherwise heavy firm packing is not likely to be achieved and elasticity of road is likely to be affected. The part of the operation which is contended by Mr. Kulkarni as heavy in this sub-operation is packing sleepers and the subsequent sub-operation of beating them with beaters. The instructions are that beaters should not be lifted above the head. All the men should aim to work beaters from the same height upto the chest level, so that sleepers are uniformly packed. It is stated that higher or lower lifting of beaters results in uneven compactness and packing does not last long. Mr. Kulkarni contends that beating sleepers in the above manner is highly arduous. According to Parthasarthy, what is done is that a beater is dropped on a sleeper in unison by all operating gangmen and, in his opinion, this process does not require much labour. Having regard to the purpose for which the above operation is done, I am inclined to agree with the deposition of Parthasarthy rather than with the contention of Mr. Kulkarni.

(v) In my opinion, the final operation of boxing and dressing cannot require much effort. The operation is essentially one of filling back the cleaned ballast with rakes and filling up the same between sleepers along rail seats.

7.33. Taking an overall view of all the sub-operations as a whole, in my opinion, those of opening ballast, respacing and squaring of sleepers, packing and repacking and boxing and dressing, are not strenuous operations. The only sub-operation which may be considered as strenuous is that of slewing but, that sub-operation, it is important to bear in mind, is a group operation and lasts only for thirty minutes in a total operation of 480 minutes. But, contends Mr. Kulkarni, that above sub-operations have to be done not in a sitting position but they have to be done either standing or bending and, when they are not so done, gangmen have to move about with one or more heavy tools. This is true. Parthasarthy's evidence is that above sub-operations have some inbuilt rest in them and that there can be some additional rest also for those who are not engaged in slewing sub-operation. There may be some rest also for them when a gangmate performs all or some of the operations entrusted to his charge. However, even if one ignores evidence of Parthasarthy that gangmen have some respite when a gangmate walks from one rail to another, after having slewed one part of a track, on the whole, I am inclined to accept evidence of Parthasarthy that there are periods of inbuilt rest and relaxation. With great respect, I accept the opinion expressed by the Adjudicator and the reasons which he has given for holding that gangmen are not intensive workers. As regards the sub-operation of slewing, it is also important to bear in mind the direction in Rule 622(d) that slewing is best done in the morning as the sighting conditions at other times are unfavourable. After giving my best consideration to all that Mr.

Kulkarni has to say, I am unable to agree with his broad submission that the operation of through packing is heavy or strenuous or arduous, much less that it is particularly or exceptionally so.

7.34. It is true that overhauling operation requires some more effort, specially in the sub-operations of opening ballast and packing and, therefore, as rightly conceded by Mr. Mahadevan, requires comparatively greater effort. But that also does not, in my opinion, render the work exceptionally or particularly heavy.

7.35. In view of my above conclusions, I am inclined to agree with Mr. Kulkarni that findings of the Seconded Pay Commission that gangmen's is group work and that it is repetitive and simple are not correct. The descriptions which I have given of the operation of through packing do not leave any doubt that, except the sub-operation of slewing and a part of the sub-operation of packing, the rest are all individual sub-operations of a gangman. The work which a gangman does can be described as repetitive only if the same operation is done by him from the commencement of his duty till the end. But the tasks which a gangman performs are of diverse nature. These tasks are not necessarily those which can be performed by any and every person without gathering some little experience, though the time required to pick up that experience may be very short. It is true that all the aforesaid work is done under the supervision of a gangmate and, therefore, personal responsibility of a gangman is almost nil except, perhaps when he is entrusted with the duty of a gate-keeper or a patrol-man or when he is doing some other errand and notices on a track any obstruction or defect which requires undertaking of immediate protective measures. He is also required to know the procedure for hand signals and for fixing detonators. But all these conclusions cannot help Mr. Kulkarni in establishing that the tasks which a gangman performs are particularly or exceptionally heavy or even heavy simpliciter. Some part of his work is certainly strenuous. There is no doubt that he has got to carry heavy load of tools to and fro every day, that he has to wield one of those heavy tools in one or other sub-operation, that he has to perform his duties in all kinds of weather including rains. Therefore, I have no doubt that it will be incorrect to describe a gangman's work as light. I am inclined to accept the view that on an overall view of a gangman's work, it is more correct to describe it as strenuous — a view which was expressed by the Adjudicator for the purpose of determining whether a gangman should be classified as intensive or not. However, even then, after giving my best consideration to all that Mr. Kulkarni has to say, I am unable to agree with his contention that the work should be regarded as exceptionally or particularly heavy. Therefore, in my opinion, the alternative submission of Mr. Kulkarni that a gangman's work is particularly or exceptionally arduous or heavy deserves to be rejected.

7.36. Some evidence has been led by parties for instituting comparisons between the work done by a gangman and that done by some other railway

servants. According to the Board, many railway servants are required to perform duties in all-weather conditions. The examples quoted are those of (1) points-men, (2) train examining staff, (3) signal maintenance staff, and (4) yard operators, such as, shunters and humpers. It also quotes the examples of hammer-men and hamals. Apart from the question as to whether the analogies are opposite, I do not think that evidence is sufficient to enable me to institute a comparison between the two sets of employees. The examples have merely been quoted and some affinities or distinctions have been brought on record without adducing full evidence of the tasks performed by the above sets of workers to enable me to reach a fruitful conclusion. The only comment which I can make is that if, on an examination of the worth of a gangman's job, it is found to deserve payment of arduous allowance, he cannot be deprived of the same simply because another similar category is not being paid such allowance. Having regard to the fact that the principle of payment of arduous allowance on the basis that it is exceptionally heavy, risky or dirty has been recognised, the correct course will be to pay arduous allowance also to the category of railway servants rendering similar duty. If, on the other hand, on merits, the task of a gangman cannot answer the aforesaid description, the fact that some other category is being paid the same, though it may be relevant for evolving the concept of arduousness, is irrelevant and cannot be made a ground for such payment.

7.37. The further question for consideration is whether the conclusion can be reached that, taking totality of all tasks performed by a gangman and not merely concentrating one's attention on the operations of through packing and overhauling, there is any case for grant of arduous duty allowance in the above sense. As already held above, some other operations are heavy and even exceptionally heavy. There is no doubt that a gangman has to perform his tasks in all weathers and those performed by him on occasions of heavy and incessant rains, storms and gales and specially on occasions of breaches and accidents, are heavy in nature and can be even exceptionally heavy. Even then, in my opinion, it will not be proper to grant an allowance of the kind, unless on a review of all the conditions, a conclusion can be reached that the sum-total of all tasks is that they are exceptionally heavy or that the periods for which they are rendered are substantially long periods. In my opinion, the tasks which can be described as heavy or exceptionally heavy are either periodical or occasional and that a few others which are strenuous are only partially so. Therefore, I am unable to reach the conclusion that the tasks performed by a gangman are substantially heavy or form a sufficiently long period of his duty. Under the circumstances, in my opinion, even on the above aspect of the matter, it is not possible to record a conclusion in favour of the Federation.

7.38. That brings me to the other question as to whether a gangman should be paid any allowance even on the finding that, though it is not exceptionally or particularly heavy, it is still arduous in the dictionary sense of the term. I am unable to reach a conclusion

in favour of the Federation on this basis also. The first hurdle in the way is that the Railway Establishment Code awards special pay only on the ground that the work of a post is specially arduous. So it will be improper to create an innovation by awarding special allowance to a gangman on the mere finding that his work is arduous simpliciter. Moreover, I agree with the view expressed by the Second Pay Commission that it is not necessary to evolve different scales of pay for Class IV servants on the ground that the task performed by some of them is heavier than that performed by others. In my opinion, the claim of the Federation must fail if it is not able to establish that the work of a gangman is particularly or exceptionally heavy.

7.39. Before closing the discussion on this Term I may clarify that I have looked into evidence strictly from the point of view of the claim based on the ground that the work of a gangman is arduous and, therefore, I must not be taken to have expressed any opinion as to whether the scale of pay which a gangman is given is or is not commensurate with the duties performed and the responsibilities carried.

TERM NO. 7

Gangmate and evaluation of his duties

7.40. A gangmate is promoted from amongst keymen after he satisfies the prescribed test. A keyman is also promoted after a similar test from amongst gangmen. A head trolleyman is appointed from amongst the senior-most trolleyman with good physique. The tests in cases of gangmate and keyman are conducted by two APWIs. The points on which these two workers are tested are intelligence, reliability and knowledge of track maintenance. I have chosen to describe the above process as the process of promotion in spite of the fact that Rule 207 of the Works Manual says that a mate shall be a person "specially selected for his intelligence, reliability and knowledge of track maintenance." I have done so because there is some force in the argument of Mr. Mahadevan that the post of a mate is not a selection post but is essentially a post to which a gangman expects to be promoted. Rule 207 aforesaid says with reference to a keyman that "The senior-most fit man in each gang under the Mate, the one who knows most about the permanent way, should be appointed as the Keyman". Chapter V of the Works Manual deals with, among others, the duties of mates and keymen. Rule 501 says that these servants shall have the correct knowledge of hand and detonating signals and shall be conversant with rules relating to (1) protection of railway line in emergencies and during works affecting track, (2) action to be taken when a train is noticed to have parted, (3) action to be taken where sabotage is suspected, (4) method of fixing safety range of detonators, (5) safety-first rules, and (6) patrolling in emergencies. It is said that usually a mate has put in service of 5 to 10 years as a keyman and not less than 20 years' total service before he is promoted as a mate and that a keyman has put in 10 to 15 years' service as a gangman before he is promoted as a keyman. A mate is in charge of a tool box and tools. It is the duty of a mate to

attend to tool box every day before the commencement of the duties of a gang, to mark the presence of gangmen who turn up for duty, to make relief arrangements in case any gangman is absent and to distribute tools and equipment which are to be carried from tool box to site of work. Some of these tools and equipment have to be carried every day and, as regards some others, a discretion is to be exercised by a mate as to which of them and how many of them are to be carried by his gang as a whole from tool box to site. When gangmen break up for lunch, tools are to be collected and kept in proper custody. It is also the duty of a mate to see that all tools are returned to the tool box at the end of the day's work and it is also his duty to place them back into tool box and keep them under lock and key. It is specially emphasized that a mate should see that tools do not go into the hands of any stranger as otherwise sabotage is likely to be facilitated. Rule 505 of the Works Manual enjoins on a mate to see that the prescribed system of track maintenance is adhered to and that tasks allotted according to instructions, entries in gang chart or diary are efficiently carried out. These instructions may be either written or oral. They may have been issued to him on the days on which higher officials had come for inspection or may be contained in gang chart or diary. Those instructions will determine the work which the gang will have to do for the day, and it is the duty of the mate to see that the work is carried out in the prescribed way. Even if no such instructions happen to be given, it is the duty of a mate to see that the work which requires to be performed on the day in question according to the prescribed annual programme is executed on that day. It is the duty of a mate to make staff arrangements if any gangman or gangmen are absent, to decide which tools are to be carried and to distribute them among workers. It is also his duty to see that definite tasks are allotted to each gangman along the track on which through packing or overhauling is to be done. His duty is to supervise all the sub-operations which are to be performed in the course of those operations. It is the duty of a mate to see that ballast is opened to the extent of the depth required, that cores under sleepers are not disturbed and that ridges of ballast which are formed between rails do not project beyond the prescribed level. It is also his duty to examine track, its materials and fastenings in detail. He has to examine undersides of rails for corrosion, rail edges for wear on fishing planes and tightness of fish bolts and notice if there are any kinks on rails. He has also to inspect sleepers for their condition and soundness, particularly at rail joints. His duties differ according to types of sleepers that he has to examine. In case of 20 years old steel sleepers, he has to examine rail seats for cracks and in case of wooden sleepers, he has to examine dog-spikes and fang bolts for their firmness and in case of C.I. Pot or Plate sleepers, he has to examine the condition of firmness of gibs, cotters and keys. It is also his duty to tighten all loose fittings and replace broken ones. It is also the duty of a mate to sight one of the rails to check spacing of sleepers and correctly chalk-mark them. He has then to make corresponding marks on the other rail by using square at every point. When the slewing sub-operation begins, a mate has to sight

the relevant rail from a distance of 100 to 200 feet, guide gangmen to spots where slewing is to be done and then supervise slewing the sub-operation. It is also the duty of a mate to gauge track. He can do this only after ensuring himself that sleepers have been truly squared. During the packing sub-operation, a mate has to sight base rail along its edge and see that any dip or low joint is lifted up correctly. After adjacent sleepers have been packed, a mate has to bring rail on the other side to correct level by using straight edge and spirit level. It is his duty to check this rail at every joint and at every fourth sleeper. It is also the duty of a mate to distribute four gangmen at a time for every sleeper and see that back-to-back packing sub-operation is made and he has to check, by beating a bamboo stick, whether packing has been correctly and uniformly done. If bamboo beating reveals any hollow sound, his duty is to see that packing is done again. After packing is systematically done, it is the duty of a mate to check carefully alignments and top, to carry minor adjustments and to repack disturbed sleepers finally. It is also his duty to see that joint shoulders are repacked and that cross levels at joints are checked. After ballast is boxed and section is tidied, it is the duty of a mate to see that cess stands maintained to the correct depth below rail level according to ballast-section-drawings. Some instruments which a mate is supplied in order to carry out above duties are (1) graduated stick marked in different colours for different spaces, (2) square, which is really an isosceles triangular wooden frame, (3) gauge which has no measurements, (4) cant-board which is a rectangular piece of wood with suitable steps at different elevations. It is also the duty of a mate to listen to the report which his keyman makes after his daily round of inspection and if the report reveals that any work requires urgent attention which cannot be delayed until receipt of proper instructions from higher authorities he has power of suspending ordinary work and taking his gang to the defective spot to rectify the defect, if any. If he decides that the defect is dangerous and that he himself cannot undertake that work, he has power of either permitting trains to pass under restricted speed or to stop trains from passing altogether, though he is required to take immediate steps for contacting higher authorities so that final action can be taken by them. It is also the duty of a mate himself to inspect the whole of his beat on one day in a week when his duty is done by his keyman. According to the Hand book For Permanent Way Men (hereafter called the Hand book), a mate is expected to know every detail of his beat thoroughly "such as the number and location of points and crossings, bridges, level crossings, 'soft spots' in the beat and various other details". Rule 510 of the Works Manual says that if a mate considers that a railway line is likely to be rendered unsafe or that any train is likely to be endangered in consequence of any defect in the permanent way or works or abnormal rain or flood or any other occurrence, it is the duty of a mate to take immediate steps to secure safety of trains by using the prescribed signals and then it is his duty to report the circumstances to the nearest Station Master. When there is abnormal rainfall, it is his duty to organise patrolling on his gang-length, whether

patrolmen are on duty or not. In the event of any damage being detected, he is required to take action to safeguard track. In case of any accident taking place in his beat, he is required to take immediate protective and relief action and also to preserve evidence which may provide a clue to the cause of the accident. It is also the duty of a mate to collect materials found or left on the track and deposit them with the Station Master.

7.41. From the aforesaid resume of the duties of a mate, it will be noticed that a mate is both a supervisor and a worker. There is controversy as to whether a mate is a supervisor of one single or a group of operations; whether he supervises operations of a group as a whole or operations of a number of individuals; and whether the supervision he is expected to exercise is loose or strict. As will appear from what has already been stated, views on these subjects have been expressed by the Adjudicator and the Second Pay Commission. The views expressed are conflicting in some respects. Whilst discussing the demand of gangmen, I have already expressed the opinion that, at least, some sub-operations in through packing are not group operations. Quite a large majority of those sub-operations are individually performed by each gangman, so that, in my opinion, in regard to such sub-operations, it is not correct to say that what a mate supervises is only a group operation and not individual operations of individual gangmen. Nor is it true, in my opinion, to say that a mate necessarily supervises one sub-operation at one time, albeit by more than one person. Though the sub-operation of opening ballast may begin at one and the same time or almost simultaneously all along the site of work, there is bound to be some time lag as regards the commencement of other sub-operations between one point and another of a section. Moreover, it is not necessary that the second sub-operation of examination of track will be undertaken only after the whole road of the section has been examined. It is not improbable that the sub-operation may begin as and when different parts of a section are prepared for such a sub-operation. It is important to notice that the area of the operation is also spread over a distance of 420 feet. Therefore, except perhaps slewing and part of packing operations, when supervision is done over a group of gangmen, supervision which is exercised by a mate is over operations of individual gangmen. So far as I can see from the instructions which have been issued to mates, they have been designed to ensure that track is kept in a trim condition in the interests of public safety. Therefore, supervision which a mate is expected to and must exercise must be close and strict. Supervision can be lax or loose only at the risk of safety of track and of leaving track in a condition which may on some even rare occasion lead to disastrous consequences. From the above resume it is also crystal clear that a mate not only supervises work of a gang but he himself performs some vital tasks on the efficiency of which depends safety of track. It is true that a track is a rigid frame and is so constructed and designed that the task of keeping it safe and sound may not require much or even any technical skill or knowledge. Probably this is why the primary task of maintaining track is

entrusted to a band of unskilled workers. However, at the same time, it cannot be denied that experience is necessary to maintain it in an efficient condition. It may be that, in a gang, one or even a few totally unskilled gangmen may be drafted during work. But, in my opinion, it is not correct to say that the whole band can be a band of totally inexperienced persons. May be, it may not be difficult for even an average unskilled person to pick up work but, in my opinion, in all such cases, dangers which are inherent of entrusting such work to unskilled persons can be set-off only by experience and leadership of a mate. If the latter does not possess true qualities of a leader, has not an eye for correct process for each sub-operation, does not have capacity to demonstrate how each such process has to be performed, capacity to inculcate and inspire both raw and experienced workers, a critical eye to see that each individual sub-operation has or has not been properly done and, before the end of the day, to see that track is left safe and sound for passage of trains, in my opinion, the purpose which the railway administration has in mind and for which permanent way organisation has been brought into existence and is being maintained, is likely to be defeated with dire consequences not only to railway administration but to general public. In this connection, there has been considerable discussion during the course of arguments as to who is or who is not in charge of track maintenance and who is or is not responsible for defects therein. Mr. Kulkarni's attempt is to establish that a mate is in charge of 6.5 kilometres of gang-length in the same sense as a PWI is in charge of his section of 65 kilometres and that a mate can be held responsible for anything which takes place in his gang-length in the same way as a PWI can be held responsible for anything which takes place in his section. On the other hand, Mr. Mahadevan's attempt is to establish that a PWI alone is in charge of the conglomeration of gang-lengths and that it is only he who is directly responsible for maintenance of track in a section and that a mate does not come into the picture except for what is actually and directly done by him. I have given my anxious consideration to both these submissions in the light of relevant rules and evidence adduced in the case. On the whole, I have come to the conclusion that none of the above views represents the correct or true position. Mr. Mahadevan is right in contending that a PWI is, as stated in Rule 204 of the Works Manual, directly responsible for track maintenance in his section. But, in my opinion, that cannot mean that nobody else can be responsible for the same. If one were to do so, one will be applying Nelson's eye to a large number of rules and body of evidence in the case. Mr. Mahadevan places considerable reliance upon the Schedule of Inspections laid down in the Works Manual and contends that those inspections are enough to ensure detection of serious defects in a track. I am prepared to assume that this is so but, at the same time, it cannot also be denied that defects may develop in a track after an inspection even of a thoroughest kind and that, on those occasions, and specially on days on which inspections are not done, permanent way organisation can depend only upon the inspection done by a mate or his immediate subordinate, a keyman,

which can bring to light the defects which may affect safe and smooth passage of trains. Evidence discloses that some of these defects can be of a serious type and that these defects may develop at any time, specially during the monsoon. Some of the defects which have been mentioned in the course of evidence which can cause derailment if they are beyond the permissible limits are (1) buckling of track, and (2) sinkage of track in monsoon. Even Parthasarthy admits that a mate can be held responsible for an accident which is due to any defect left in the execution of the work by the gang or is due to any unauthorised work having been undertaken by him. In any case, it is not improbable that derailment may occur as a result of defective operations on permanent way. Evidence shows that the following defects can cause derailment if they are beyond permissible limits: (1) cross levels varying at short intervals, (2) incorrect spirit levels of rails, (3) slack or tight gauge, (4) sleepers unserviceable in continuous level, (5) fittings missing or loose in a continuous level, and (6) fractured rails. There is no doubt that, for the above defects, a PWI will be directly responsible, but it cannot be denied that, if the aforesaid defects were noticeable during any of the operations which a mate undertakes or during the course of his own inspection, he will be certainly responsible. Even apart from this narrow question of responsibility of a mate, I have not the slightest doubt that, from the point of view of safety of public life and property, a mate does play an important role primarily with reference to the particular part of the beat on which he operates on the day in question and also for the rest of the beat which he either personally inspects or on which he receives a report from his keyman and in respect of which report he fails to take proper or adequate action. Under the circumstances, I have come to the conclusion that it is not correct to say that the post of a mate is merely supervisory and that it does not carry any responsibility whatsoever with it. In my opinion, that post does carry responsibility, any slackness in the discharge of which is likely to result in dire consequences. It is for this reason that the qualifying rule does not permit a mate to be appointed only on the basis of seniority but further insists not only that he should be intelligent but also that he should be reliable. Mr. Mahadevan's contention fails to take into account an important duty expected of a mate. As already indicated, it is the responsibility of a mate to suspend or stop regular work if any serious defect is found on the track which is likely to endanger smooth traffic and either to start operations thereon immediately or to stop trains or permit them to pass only under restricted speed. Not only this, but he is permitted to exercise his discretion and judgement in emergent cases to undertake work which requires previous sanction, if he finds that the same is necessary to be undertaken in the interests of safety of track without such sanction. The conferment of the power of exercising judgment and taking spot-decisions can only be explained on the ground that the mate being the person on the spot is the proper person to be entrusted with the above duties even though the whole hierarchy of higher officials has been appointed, each of whom is assigned the specific duty of inspecting the track. Mr. Mahadevan contends that though

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Rule 511 of the Works Manual gives power to a mate to act in emergent circumstances, he cannot envisage any contingency in which the power can be exercised. I do not think I can agree with him. I am not prepared to act on the basis that the above rule is superfluous or otiose. Mr. Mahadevan contends that a mate does not require any further equipment than what he has gathered during his service as a gangman. I cannot agree. The various tasks which I have enumerated above cannot leave any doubt that a mate has to perform duties which were never performed by him as a gangman. The tasks of inspection of track and its fittings, sighting rails for slewing, gauging, inspection of packing, ascertainment of alignments, squaring, are all tasks which a mate does not perform whilst he is a gangman.

7.42. For above reasons, I have come to the conclusion that (1) a mate is a supervisor of not one group of operations only but is a supervisor of a group of individual workers and supervises over not one but a series of different operations, (2) that he must possess qualities of leadership, (3) that he must himself be an efficient gangman capable of imparting correct knowledge as to how to carry out various operations, (4) that he must be able to make arrangements for the day's work by making relief arrangements if necessary, (5) that his post involves responsibility, neglect of which can lead to serious consequences, (6) that it involves taking of spot decisions in cases of emergencies, (7) that it involves exercise of judgment when prescribed or mandated tasks should be departed from, (8) that it requires capacity to manage a band of unskilled, uneducated or semi-literate persons, (9) that it requires ability to exact work which will ensure that a track is maintained in safe and sound condition, and (10) that it requires performance of original duties which are peculiar to a mate and are not performed by a gangman.

7.43. It is on the basis of the above conclusions that the demand for revision of pay scale of a mate has got to be decided. The demand is based on the submission that the work done by a gangmate is of skilled nature. Workers in a workshop are classified as skilled, semi-skilled and unskilled. The first infirmity in regard to this aspect of the case of the Federation is that it proposes to extend a concept meant for workshop establishment to permanent way organisation. The second infirmity is that, even if such an extension is permissible, it wishes to extend a concept evolved for a workman to a supervisor. However, assuming that even this is permissible, none of the parties has brought to my notice any authentic definition of each of the above three kinds of workers and, therefore, *prima facie* it is difficult to decide that work done by a mate is of a skilled nature. Broadly speaking, an unskilled worker is one whose work is such that any ordinary person can undertake it without any education, previous training or experience. A skilled worker may be described as one who creates or manufactures a new article or changes the shape or form of an existing article, which gives it a new appearance, beauty or fresh life. All such operations cannot be done without acquiring skill requisite for the same. A semi-skilled worker may be regarded to be one

who, though not unskilled or skilled in the above sense, is in the process of or is being trained for becoming a skilled worker. Applying the above tests, I am not convinced that any of the operations which have been assigned to a mate can be given the characteristic of skilled work. Undoubtedly, those operations do require experience and even handling of some tools and instruments but, as appears from evidence of Parthasarthy, all those tools and instruments are of an elementary nature and have been so designed as to allow even an uneducated person to handle them in proper and efficient manner. It is not necessary for me to pursue this aspect of the matter further in greater detail because Mr. Kulkarni does not touch the aspect of skill. In any case, he does not emphasise it. Probably, he did not do so because the primary task which a mate is assigned is that of a supervisor and the worth of his assignment requires to be evaluated and his pay scale determined on that basis, although in doing so, it may be borne in mind that he has also to perform some original work of the type mentioned above. By the Second Pay Commission also, the pay of a mate was fixed primarily on the basis that his post was supervisory. As already indicated, when the Second Pay Commission was appointed, mates were in the scale of Rs. 40—1—50—E.B.—2—60 which the Commission states was higher than the scale prescribed for many other categories of supervisors of unskilled labour. The Commission rejects the claim for a higher rate of pay for mates on the ground that they supervise eighteen to twenty gangmen, but the Commission finds that the average number supervised is approximately ten. Probably, the Commission rejects the claim for higher grade not only on this ground but also on the ground that gangmen work in a batch and supervision of a mate consists "therefore, of supervising only one at a time". The Commission assigns the scale of Rs. 80—1—85—2—95—E.B.—3—110 to a mate. The discussion of the Commission in regard to the above matters is to be found in paragraph 135 of section XIV headed "Class IV Categories" of Chapter XXII headed "Railways". The Commission does not appear to indicate as to on what basis the above scale is fixed. Mr. Mahadevan draws my attention to paragraph 20 of Chapter XX under the heading "Workshop Staffs". In that paragraph, the Commission recommends three scales to replace the existing scales applicable to semi-skilled and unskilled supervisory staffs. In that paragraph, the Commission recommends that for the scales of Rs. 40—1—50—E.B.—2—60 and Rs. 40—2—60, the scale of Rs. 85—2—95—3—110 should be granted. The recommended scale is the same as the one granted to a mate except that the recommended pay scale for semi-skilled worker starts at Rs. 85/- whereas that recommended for a mate starts at Rs. 80/-. Mr. Mahadevan is unable to give any explanation for this variation. He, however, says that, if necessary, this minor re-adjustment may be made. Therefore the argument of both sides proceeds on the premises that existing scale of a mate is fixed on the basis that he is a supervisor whose pay scale has been equated with the pay scale of a semi-skilled worker. Mr. Kulkarni maintains that this equation is erroneous. On the other hand, Mr. Mahadevan contends that the position which a mate occupies is no better than that of an ordinary

semi-skilled worker. The Commission considers the question of fixing pay scales of semi-skilled and unskilled supervisory staffs in all Government departments in paragraph 18 at page 222 in Chapter XX of its Report. It comes to the conclusion that it is sounder to divide supervisory staff into unskilled and semi-skilled. In sub-para (3) of paragraph 18 aforesaid, the Commission further considers the question of fixation of one or more separate scales for unskilled supervisory staffs in workshops. The Commission observes that a supervisor need not possess any skill himself but, at the same time, he must have certain other personal qualities which he must possess if he is to discharge his supervisory functions efficiently—"qualities which a semi-skilled workman may do without". On this ground, the Commission concludes: "Thus, while the work of the one is as such not comparable with that of the other, the same value can, reasonably, be put on the work of the two; and there is, therefore, no need for any separate scale for unskilled supervisory staffs who should ordinarily have the lowest scale for semi-skilled staffs". From this paragraph, it is argued by Mr. Mahadevan that a mate has been given the scale of semi-skilled staff, not because he is considered to be a semi-skilled artisan but because he is unskilled supervisor of unskilled staff. Mr. Kulkarni disputes both the underlying implications. He submits that a mate is a skilled servant—a claim which has already been considered by me and rejected. Mr. Kulkarni alternatively argues that, in any case, a mate is himself a semi-skilled worker. I propose to consider whether the various operations done by a mate can be regarded as semi-skilled a little later, but, in the present context, I do not consider it necessary to do so because, essentially, work which a mate performs is that of a supervisor and it is on an evaluation of that work that his pay-scale principally should be fixed, though in doing so, one may bear in mind the fact that the original work which he performs is either of skilled or semi-skilled nature. Therefore the claim which requires to be considered at this stage is whether a mate is a supervisor of unskilled staff. Mr. Kulkarni contends that this is not correct. He submits that gangmen supervised by a mate are semi-skilled staff. I have given my anxious consideration to this question, bearing in mind all the operations which a gangman does. I am unable to reach the conclusion that he is a semi-skilled worker. It is true that the analogy of trade tests cannot be applied in this case. Such a test can be applied only if there is a trade. Therefore, tests which have been laid down by railway administration for determining when a worker is semi-skilled cannot be applied in the case of a gangman. Even if those tests were applied, I doubt very much whether a gangman can be regarded as semi-skilled. In considering the above question, I am not at all taking into account responsible nature of work and knowledge of rules which a gangman is required to possess. Those things may be relevant when fixing his pay scale as unskilled worker, but, they by themselves cannot convert an unskilled worker into a semi-skilled one. However, so far as the work of a mate is concerned, I am not prepared to agree with Mr. Mahadevan's submission that it is no better than that of a gangman himself. For reasons already given, I have no doubt

that the expertise which a mate must possess is of a different kind and some what more than what a gangman possesses. Under the circumstances, there is some force in the argument of Mr. Kulkarni that a mate cannot be regarded merely as an unskilled worker. However, all the same, it is difficult to designate a mate as a semi-skilled worker because that terminology, borrowed from workshop parlance may not be exactly applicable to him. Even then, he can well be regarded as a supervisor of unskilled workers whose supervision itself is not of an unskilled nature. Apart from all this, I have no doubt whatsoever that work of a mate cannot be equated with that of a Jamadar or any other supervisor who has merely to supervise work of unskilled staff and nothing more. In my opinion, the work of supervision done by a mate is of a higher order than that of a jamadar or an ordinary supervisor of unskilled labour. As already shown, not only is he to be fully acquainted with the work which is gangman performs but, in addition, he is to perform certain tasks of his own which performance alone can complete the work of track keeping and maintenance. In addition to this, he is to exhibit some qualities and undertake some responsibilities which an unskilled supervisor does not possess, whether of semi-skilled or unskilled staff. He has to show qualities of leadership and a sense of responsibility; has to set an example; has to take spot and emergent decisions; has to know annual programme of work; has to take protective measures for safety of track, and to organise, in times of danger to track, measures which would avert accidents. Moreover, he is not merely a supervisor of a single operation but is a supervisor of a group of workers performing individual operations. He supervises individual operations of a number of gangmen, each of whom performs his own job and, at the same time, performs tasks allotted to him. With respect, it cannot be postulated with confidence that the Pay Commission fixed pay scale of a mate after taking all the above facts into consideration. It is probable that all the above facts were not placed before that august body. In my opinion, in order that justice may be done to a mate, it is necessary that all the above elements in his job must be reflected in his pay scale. In this connection, I do not think that any useful purpose will be served by taking analogies from different departments. One is likely to arrive at a correct solution by paying attention to the organization of the Civil Engineering Department and pay scales prevailing therein. Now the organisational structure in that Department is divided into two branches—The Permanent Way and the Works. A gang is the base of the branch of the Permanent Way. A mate is the lowest rung of the supervisors in that branch—which institution of supervisors is devised to maintain permanent way safe and sound. A mate has to put in a long term of service as a gangman or keyman before he is promoted as a mate. There is still further channel for promotion for him. A mate can be promoted to the post of a Permanent Way Mistry and the latter, in his turn, has the chance of being promoted to the post of an APWI. In fact 20 per cent of the latter posts are reserved for Permanent Way Mistries. Now a Permanent Way Mistry was formerly in the scale of Rs. 130-5-175-EB-6-205-7-212 but, subsequently, he was given the scale of

Rs. 150—5—175—6—205—EB—7—240. Now a Permanent Way Mistry continues to perform almost the same job as a mate does except that he supervises operations of more than one gang and is assigned duties at important places like yards where there are more points and crossings to be attended to. It is true that, in addition to these, a Permanent Way Mistry also performs certain other duties. Some of these duties are arranging for dip lorries, supervising their loading and unloading operations and their movements and movements of material trains. He is also assigned a few other jobs to relieve APWI of some of his duties. All the same, there is a considerable gap between the scale of a mate and the next scale to which he can be promoted. If one bears in mind that the other jobs which a Permanent Way Mistry performs are essentially supervision over group work and, though there appears to be justification for granting him a higher scale of pay, I am not satisfied that the gap between the two scales should show such a wide chasm. I am satisfied that the present scale of Rs. 80-1-85-2-95-EB-3-110 does not reflect correctly all the burdens which a mate at present carries in maintenance of railway track. It may be that grant of the same scale of pay as that given to a skilled artisan may not be justified, but, in between that scale and the present scale of a mate there is one more scale which is granted to some railway workers on the basis of certain special considerations. For example, a carriage cleaning supervisor is granted the scale of Rs. 105-3-135. Mr. Mahadevan justifies the grant of this scale to this supervisor only on the solitary ground that the job which he performs is of such prime importance to members of the public that it is necessary to give that scale so that he may attend to the needs of at least members of the middle class whose needs and conveniences he has primarily to attend to. It is noteworthy that he is paid that scale even though he has nothing else to do but to supervise a single operation of cleaning of carriages done by unskilled workers. Hospital dressers, record-sorters or lifters and store-issuers are given scales which are even higher than those for semi-skilled workers and the scale is the same as that given to carriage cleaning supervisors.

7.44. In my opinion, taking into consideration all factors in regard to a mate, especially duties he performs and responsibilities he discharges, pay scale of a mate should be Rs. 105-3-135 instead of the present scale. I decide accordingly.

Keyman and evaluation of his duties

7.45. As regards a keyman, the Federation demands the scale of Rs. 80-1-85-2-95-EB-3-110 instead of the present scale of Rs. 75-1-85-EB-2-95. This claim is not based on any specific allegation regarding the nature of duties to be performed by a keyman. It appears to be more a demand consequential to the demand in regard to a mate. In the hierarchy of a gang, a keyman occupies an intermediate position between a mate and a gangman. His post is a promotion post and, as already stated, promotion

is made on seniority-cum-fitness test. Qualifications laid down by rules for promotion of a gangman to the post of a keyman are the same as those laid down for promotion of a keyman to the post of a mate. The rule requires that promotion to the post of a keyman is to be made not only with a view to promoting a gangman but also with a view to finding a suitable person who, in fulness of time, will be able to fill in the post of a mate. The list of a keyman's duties shows that, in fact, in the course of performance of his duties, a keyman has to discharge the functions of a mate at least once a week. Therefore, a keyman is more or less a mate in embryo. Evidence discloses that, usually, a gangman of ten to fifteen years' standing is promoted as a keyman. For all these reasons, according to the Federation, pay scale of a keyman must be also revised simultaneously with that of a mate. The most important duty which a keyman has to perform is that of inspection of the whole gang beat every day from one end to another. He attends to tool box, receives his kit of tools from the mate and undertakes a trek to the end of beat, inspecting the track along one side of the rail, and goes to the other end of beat along the other rail in case of a single line and the other railway track in case of a double line. Then he returns to site of work or, if no time is left, to the tool box. After the itinerary is over, if there is still any time left, it is his duty to assist his mate in discharge of his duties. Normally, the itinerary of a keyman covers the total length of 13 kilometres. All this has to be done on foot, carrying his kit of tools. Although in the Statement of Demands it is mentioned that his tools weigh 15 to 18 kilograms, there is no evidence led in this regard. Therefore, I presume that the load which he carries is not such as to cause strain to a keyman. In the course of his itinerary, a keyman has to inspect rail track including rails, sleepers and fittings. If there are any defects in any of these which can be removed by him, it is his duty to do so. In other cases, it is his duty to make a report to his mate about those other defects. If a defect is of such a nature that immediate measures are required to be taken, it is his duty to take them and then advise his mate. I have already referred to the fact that, sometimes, serious defects may develop in a track all of a sudden and to the further fact that some of these defects, if they are beyond permissible limits, might lead to disastrous consequences. Having regard to the fact that only visual inspection is to be done of a track, it is obvious that such inspections can reveal only obvious or apparent defects but, all the same, having regard to the importance attached to the track being maintained in a sound and safe condition and having regard to the fact that he is the only servant in the Permanent Way Organization who moves daily from one end of a track to the other on foot, the importance of his duty cannot be minimised. His duties assume special importance during monsoon and especially on occasions of storms, gales and floods. Perhaps, it is for these reasons that, although the actual duties which are performed are not, comparatively speaking, as arduous as those of a gangman, a keyman is given the higher scale of Rs. 75-1-85-EB-2-95. Before the Second Pay Commission, a claim was made for the scale of Rs. 60-130 (prescribed scale) on the basis that a keyman

is a skilled worker. The Second Pay Commission rejects this claim on the ground that the level of skill required of a keyman is not comparable to that of a skilled artisan. Therefore, the Commission concludes that there is no case for any change in a keyman's relative position. Ultimately, the Commission recommends the scale of Rs. 75-1-85-EB-2-95. It will be noticed that this scale corresponds to the old scale of Rs. 35-1-50. In my opinion, though the Commission is justified in holding that a keyman is not a skilled worker, sufficient importance has not been attached to the fact that a keyman is a mate in embryo and that, in fact, he performs the duties of a mate for at least 52 days in a year and perhaps more when his mate is on leave or absent for some reason. Under the circumstances, having decided that a mate should have the scale of Rs. 105-3-135, I decide that the pay-scale of a keyman should be Rs. 75-1-85-EB-2-95-EB-3-110.

Head Trolleyman

7.46. The Federation demands the scale of Rs. 75-1-85-EB-2-95 for a head trolleyman in lieu of the existing scale of Rs. 75-1-85-EB-2-89. The higher scale is demanded on the allegations that nature of duties performed by a head trolleyman and responsibilities which the post carries require grant of a higher scale. As already stated, a head trolleyman is appointed from senior-most literate trolleyman with good physique, intelligence and reliability. He is also eligible for being promoted to the post of a keyman. A head trolleyman performs certain duties other than those performed by an ordinary trolleyman. However, when a PWI has to travel with a trolley on a train in which room for the trolley is not available, then, according to Parthasarthy, any prudent PWI will ensure that the trolley is loaded by approaching the guard himself. There does not appear to be any evidence in support of the Federation's case that, in such cases, it is the head trolleyman who makes the arrangements, nor is there reliable evidence in the case to show that a head trolleyman is responsible for operating the trolley except on occasions on which he alone has to operate the same. There is no clear evidence as to what those occasions are and incidence of those occasions. However, barring such occasions, duties which a head trolleyman has to perform are the same as those of any other trolleyman except that, perhaps, along with the officer travelling on the trolley, he also has to be vigilant about approaching trains etc., in regard to which he is required to give warning in time. However, according to Parthasarthy, the extent of this vigilance is elementary. On the whole, in my opinion, additional duties which a head trolleyman has to perform are sufficiently remunerated by a higher start and a higher end in the present pay-scale. The only additional ground Mr. Kulkarni puts forward in support of the Federation's claim is that, having regard to the fact that the Railway Board has now given 20 per cent of total number of gangmen's posts a new grade of Rs. 75-1-85-EB-2-89 and increased the percentage to 30 provided a gangman of 20 years' service cannot be given the higher grade within the prescribed percentage of 20, a head trolleyman will not get the benefit of that new order at all since

he is already in the same grade as that given to a section of gangman. Mr. Mahadevan, however, states that this contention is based on a mis-conception. He contends that the new grade has been given only to gangmen and it is not extended either to gatemen or trolley-men. Although trolley-men are borne in the same list as gangmen for the purpose of seniority and that gangmen, gatemen and trolley-men are interchangeable, Mr. Mahadevan contends that the above order is meant only for the benefit of gangmen and not those who are appointed gatemen or trolley-men. Mr. Kulkarni maintains that if any gateman or trolleyman intends to have the benefit of the above order, he must come back to the cadre of gangmen. Mr. Mahadevan, therefore, submits that if there is any trolleyman who is affected as contended by Mr. Kulkarni, his proper remedy is to opt for being posted as a gangman. In view of this submission of Mr. Mahadevan, Mr. Kulkarni has no more comments to offer. He only rests content by saying that he will have to agitate the question in some other manner, if so advised. Therefore,

I decide that the claim made on behalf of the head trolley-men should be rejected.

Summary of decisions

7.47. For the sake of convenience, I summarise my decisions as follows :—

- (1) The claim of gangmen for payment of an arduous duty allowance of Rs. 3/- per month is rejected.
- (2) A gangmate should be given the scale of Rs. 105—3—135 instead of the existing scale of Rs. 80—1—85—2—95—EB—3—110.
- (3) A keyman should be given the scale of Rs. 75—1—85—EB—2—95—EB—3—110 instead of the existing scale of Rs. 75—1—85—EB—2—95.
- (4) The claim of head trolley-men for granting the scale of Rs. 75—1—85—EB—2—95 is rejected.

CHAPTER VIII

TERM OF REFERENCE NO. 8—SCALES OF PAY OF RUNNING STAFF

Preliminary

8.1. The 8th Term of Reference is as follows :

“The scales of pay of all running staff should be enhanced”.

8.2. Running staff is a part of Operating Department and consists of two sections : (1) Traffic staff, and (2) Loco staff. Traffic staff comprises of (1) brakemen, and (2) guards. Guards are divided into three grades A, B and C. In the present Reference, I am concerned with both these categories of Traffic staff. Loco staff performs duties on steam, diesel and electric engines. Those performing duties on steam engines are (1) engine cleaners, (2) second firemen, also called firemen C, (3) first firemen grades A and B, (4) shunters grades A and B, and (5) drivers, A, B and C. There is no category of firemen amongst loco staff working on diesel engines. Instead, there is a category of employees described as drivers' assistants who correspond to firemen A. Loco staff working on electric engines have a category designated as motor-men who work on suburban trains and who correspond to drivers B of steam engines and who are designated as drivers B when they work on passenger trains. There are no shunters B on electric traction side nor is there any category of firemen on that traction. Below the category of shunters A, there is a category designated as assistant drivers, equivalent to drivers' assistants in diesel traction. Of the above loco staff, I am not concerned in this Reference with engine cleaners. Though no demand has been made by the Federation in regard to motor-men and assistant drivers on electric traction and drivers' assistant on diesel traction, there is no dispute that pay-scale of motor-man should be the same as that of driver B, and pay-scales of assistant driver on the electric traction and drivers' assistant on diesel traction should be the same as the pay-scale of fireman A on steam traction.

8.3. The present pay-scales of the above running staff are as follows :—

Drivers A	—	Rs. 335-425
Drivers B	—	Rs. 210-380
Drivers C	—	Rs. 150-240
Shunters A	—	Rs. 130-200
Shunters B	—	Rs. 130-158
Firemen A	—	Rs. 125-155
Firemen B	—	Rs. 100-130
Firemen C	—	Rs. 80-95
Guards A	—	Rs. 205-280
Guards B	—	Rs. 150-240

Guards C — Rs. 130-225

Brakesmen — Rs. 100-130

These pay-scales are based upon the recommendations of the Second Pay Commission and came into effect from July 1, 1959.

8.4. The Federation demands that the pay-scales of the above employees should be fixed as follows :

Drivers A	—	Rs. 370-475
Drivers B	—	Rs. 270-425
Drivers C	—	Rs. 205-280
Shunters A	—	Rs. 150-212
Shunters B	—	Rs. 150-185
Firemen A	—	Rs. 130-180
Firemen B	—	Rs. 110-135
Firemen C	—	Rs. 80-110
Guards A	—	Rs. 250-380
Guards B	—	Rs. 205-280
Guards C	—	Rs. 150-240
Brakesmen	—	Rs. 110-180

8.5. The emoluments of running staff comprise of two elements : (1) an emolument based on a certain scale of pay, and (2) an allowance called running allowance. The Federation contends that running allowance is paid (1) to meet out-of-pocket expenses, and (2) to provide incentive to turn out more kilometrage. The case of the Federation is that pay-scales and running allowance are confused though their purposes are different and that the result is that pay-scales have remained low because it is thought that running allowance has an element of pay in it and running allowance is kept low because pay-scales are low. The Federation contends that pay-scales have never been considered on a rational basis and that they are not commensurate with duties performed and responsibilities carried by running staff. The present demand for revision of pay-scales of running staff came to be made after an order was passed by the Board on April 9, 1964, revising the pay-scales with effect from April 1, 1964 of the lowest category of Assistant Station Masters belonging to Traffic Department. Before the latter date, the pay-scale of an ASM in the lowest category was Rs. 130-4-170-EB-5-200-EB-5-225. On the above date, the Board, whilst maintaining the initial entry of the pay-scale at Rs. 130/-, enhanced the tail-end to Rs. 240/- and ordered that the initial

starting pay of an ASM in the above category shall be Rs. 150/-. The Federation maintains that this is an odd pay-scale and that the real effect of the above order is the creation of a totally new pay-scale starting with Rs. 150/- and ending with Rs. 240/-. The Federation further contends that the above order of the Board has disturbed a certain relativity which obtained between the pay-scales of guards C and ASMs. From what has been stated above, it will be observed that both these categories of railway employees were on the same pay-scale when the above order was passed. The Federation contends that this relativity obtained even in earlier years and relies for this contention on the pay-scales of the above two categories of employees fixed since 1-1-1947. The demand of the Federation for fixing the pay-scale of guard C at Rs. 150-5-175-6-205-EB-7-240 is mainly based upon the above alleged relativity between the pay-scales of guard C and ASM. The pay-scale demanded for guard C is the same scale which at present is given to guard B. The Federation, therefore, demands that guard B should get the next higher scale of Rs. 205-7-240-8-280, which is at present being given to guard A. From the existing pay-scales of all the categories of running staff, it will be noticed that there is a parity existing at present between the pay-scales of guard B and driver C. Therefore, the Federation demands that the new pay-scale of driver C should correspond to the new pay-scale of guard B. The demand for revision of the pay-scales of other categories of running staff is more or less based on the above pattern of the existing pay-scales and the new pay-scales demanded by the Federation.

8.6. The Board resists the above demands by denying that there was in the past any relativity between the pay-scale of guard C and that of ASM. The Board contends that, even if there was any such relativity in the past, the parity has changed with re-valuation of the job of ASM and on account of administrative and public attitudes. The Board maintains that the pay-scales of running staff and running allowance paid to them sufficiently remunerate running staff for duties discharged and responsibilities carried by them.

8.7. Though it is not correct to say that the demand of the Federation is based upon the principle of relativity alone, there is no doubt that that principle does play an important role in their demand. The present demand follows, if it does not stem from, revision of the pay-scale of Assistant Station Masters. The Federation, however, does not base its case only on the principle of relativity emerging from uniformity of pay-scales of guards C and ASMs. It further seeks to establish, independently of the pay-scales, a relativity in a number of matters presently to be mentioned. Besides uniformity of pay-scales between the above two categories, the Federation seeks to establish relativity on the following matters between those two categories : (1) recruitment, (2) channels of promotion, (3) duties, (4) responsibilities, and (5) several miscellaneous matters. Although the case as set out in the Statement of Demands of the Federation proceeds on the basis of revision of pay-scales on intrinsic merits of the demand,

probably, having regard to the fact that the fresh demand came to be made after the revision of the pay-scale of ASM, the arguments mainly proceed on the ground that the principle of relativity is violated by the above order. Therefore, the case for revision of pay-scales was initially argued on the basis of the violation of that principle. However, Mr. Kulkarni contends that, even if the Federation is not able to substantiate its case of violation of the above principle, the case must be considered on its intrinsic merits enumerated above.

8.8. Having regard to the above context in which the demand for the revision of the pay-scales came to be made in 1964, Mr. Kulkarni pleads, at the commencement of his arguments, that his case is confined in the present demand more or less to the same grounds on which the demand was made in 1964 and that, therefore, his case before the present Tribunal should not be taken as precluding the Federation from substantiating the same demand before the Third Pay Commission on different grounds, such as, whether present pay-scales are or are not adequate, whether they conform to the scheme and pattern of pay-scales obtaining on railways as a whole and whether injustice is or is not done to running staff in fixing their pay-scales and whether dieselisation, present or prospective, and other schemes of modernisation and improvement in railway system do or do not require revision of pay-scales, nor should the Federation be debarred from pleading for removal of what he calls "such anomalies" as prevail in differences in pay-scales of shunters A and B and firemen A and B, although each of the above grades of running staff renders identical duties.

Bases of present demands

8.9. In view of the above grounds, it will be convenient to enumerate, at first, a few facts on which the present demands are based. A great deal of evidence is led by the Federation about duties performed by various categories of running staff and a number of rules and orders are quoted on the subject. Witness Krishan has given detailed evidence regarding duties performed by guards A and B. Witness Sharma has given detailed evidence regarding duties performed by various categories of loco running staff and witness Rozdon has given evidence regarding duties performed by assistant drivers, drivers C, motormen, drivers A, drivers on Ghat sections and on electric traction. It is noteworthy that all this evidence has, except in a few matters, not been challenged by Mr. Mahadevan either in cross-examination or in the deposition of witness Sinha. Thus, there is very little controversy between the parties regarding actual duties performed by members of running staff. The real controversy is as to how those duties and conditions of service of running staff compare with duties and conditions of service of Assistant Station Masters and other comparable categories of railway employees and as to how those duties and conditions are to be evaluated for fixation of pay-scales. In order to enable me to undertake this task, it will be convenient if facts and circumstances on which reliance is placed by both sides in regards to duties and responsibilities of

running staff and their conditions of service and other matters are mentioned first, so that controversies in regard thereto may at first be resolved and the task of evaluating jobs of running staff on their own intrinsic merits and for instituting various comparisons may be facilitated.

Mode of Recruitment and avenues of promotion

8.10. Posts of brakemen are filled by promotion from class IV categories. Guards are recruited as trainees. The trainees' quota was originally fixed at one-third but is now fixed at $22\frac{1}{3}$ per cent of vacancies in grade C. The balance is recruited by promotion from amongst the staff belonging to Transportation and Commercial Departments, especially those working at railway stations, such as, commercial clerks, ticket collectors, trains clerks, yard staff and brakemen. Educational qualification for direct recruitment is matriculation with a pass in English or its equivalent, and age qualification is 18 to 25 years. Till 1964, Assistant Station Masters were also eligible as trainee guards. Their quota of recruitment was $16\frac{2}{3}$ per cent. The quota of recruitment for commercial clerks and ticket collectors was 20 per cent; that of trains clerks 20 per cent and that of brakemen 10 per cent. Formerly, both junior and senior trains clerks were eligible as trainee guards. However, senior trains clerks in grades of Rs. 205-280 and Rs. 250-380 are not now eligible for recruitment as guards C. Only officiating trains clerks in the grade of Rs. 150-240 are so eligible. After ASMs were debarred from recruitment to the post of guard C, their quota was distributed amongst other eligible categories, the details of which have not been placed before me. I understand from Mr. Mahadevan that, after evidence was led in this case, orders have been passed for reducing the quota of direct recruits from $33\frac{1}{3}$ per cent to $22\frac{1}{3}$ per cent and that the quota of trains clerks has been increased from 20 to 31 per cent. The quota fixed for brakemen was 10 per cent formerly and continues to be the same after the quota for recruitment of ASMs was done away with. Whereas brakemen are promoted by selection, the rest of the departmental promotees are promoted on the basis of seniority-cum-suitability rule. After recruitment, trainee guards are (1) given initial training, and (2) imparted road learning. According to the Federation's witness Krishan, the subjects taught during initial training are operating, commercial, carriage & wagon, fire fighting and general subjects. According to Board's witness Sinha, they are given training in (1) rudiments of automatic brake working system, (2) maintenance of rolling stock including train lighting, (3) certain aspects of commercial duties, (4) rudiments of carriage and wagon maintenance, (5) portions of Transportation Manual including rules relating to interlocking, (6) wagon pooling, (7) I.R.C.A. Rules and Regulations including interchange of wagons, and (8) lay-out of yards. A trainee guard has to pass a written test and has only two chances for doing so. If he fails to pass the test, he is either discharged or sent back to his parent department. Guard C is also given a refresher course every five years, the duration of which is about a month. The passing of this course is compulsory. Here also, he is given three chances. If he fails the

first time, he will not be assigned duties of a guard. If he fails the second time, he has to attend the course at his own expense and if he fails the third time, he is either discharged or re-absorbed in the parent department. Guard C is eligible for promotion to post of guard B and guard B is eligible for promotion to post of guard A. Guard C is also eligible for promotion to post of higher category of ASM and to post of Assistant Yard Master. Guards A and B are eligible for posts of Train Controllers, their quota being fixed at 30 per cent. But if no guard A or B is available for promotion, guard C is also eligible. Similarly, all guards are eligible for promotion to posts of Traffic Inspectors, their quota being fixed at 20 per cent. Guards B are eligible for promotion as Yard Masters or Station Masters in grade of Rs. 250-380, 20 per cent posts being reserved for them. The grading of guards depends upon trains on which they operate. C guards run goods trains, B passenger trains and A mail and express trains.

8.11. Literate persons are eligible for recruitment to post of engine cleaners. Educational qualification for engine cleaners is that they must be able to read and write simple sentences in any language, the standard required being higher than that required for a Khallasi. However, 40 per cent of recruits is required to be at least of middle school standard. Recruitment is made either direct or by promotion from unskilled categories of running shed staff. Before appointment, candidates from either source must pass medical test in class A-1. They are also required to have a good physique. Firemen C are recruited only from engine cleaners. Candidates for this post must pass second fireman's promotion course for which they are given training for four weeks in theory and two weeks in practice, at the end of which, they have to pass a written and an oral test. They are also required to pass the medical test in class A-1. The subjects taught are (1) lighting, dropping, cleaning and banking fire, (2) generation of steam, (3) checking of gauge column, blow down cocks and safety valves, (4) lubrication, (5) kinds of signals, (6) preparation of engines for service, (7) breaking coal into small pieces, (8) firing coal, (9) use of engine tools, (10) reading steam pressure gauges, (11) opening of vertical water columns and filling water tanks, (12) firing on stationary engines in sheds, and (13) moving engines in sheds and yards. After passing this course, an engine cleaner waits for his chance of promotion as fireman C. Fireman C is eligible for promotion as fireman B. Fireman A are recruited from two sources, (1) direct, and (2) from fireman B. The Educational qualification for firemen A recruits is matriculation. The number of posts of firemen A is determined on the basis of the extent of wastage in higher promotional posts. Vacancies corresponding to number of vacancies in higher promotional posts are filled from the above two sources, 75 per cent of the vacancies being reserved for firemen B and 25 per cent being reserved for direct recruits. Direct trainees for firemen A undergo a training course for two years and promotees from firemen B undergo training for four to eight months. Fireman B is eligible for promotion to post of shunter B, and fireman A is eligible for promotion to post of shunter A, and both shunters A and B are eligible

for post of driver C. Thus, a fireman B has two channels of promotion as driver C. Either he goes to the post via shunter B or he goes to that post via fireman A and shunter A. Both fireman A and B have to pass a promotion course before becoming eligible for posts of shunters A and B respectively. Their promotion course includes training in (1) general and subsidiary rules, (2) design and theory of locos, (3) their maintenance and operation, (4) operation rules, and (5) practical training. The duration of the course is eight weeks. Grading of drivers is dependent upon classification of trains on which they work. Driver C works on goods trains, driver B on passenger trains and driver A on mail and express trains. Driver B is eligible for promotion to post of Assistant Loco Foreman whence he can rise to post of Loco Foreman and driver A is eligible for post of Loco Foreman whence he can rise to post of Assistant Mechanical Engineer. Driver B is also eligible for post of Power Controller. Drivers are eligible for posts of Junior Fuel Inspectors and thence to posts of Senior Fuel Inspectors.

8.12. Educational qualification for an Assistant Station Master is matriculation with 40 percent marks in English. Before being posted as an ASM, the candidate is given a training which ranges on different railways from nine to seven months, and in one case, to fourteen months. Training imparted is in (1) Morse telegraphy, (2) rules and regulations regarding acceptance and despatch of telegrams, (3) specified chapters from GSR, (4) Transportation Manual, (5) commercial duties, and (6) station accounts. The syllabus contains such subjects as general knowledge, transportation theory, transportation practice, telegraphy, coaching practice, accounts, goods theory, goods practice, goods accounts, commercial statistics, first-aid, fire fighting and civil defence. Evidence discloses that, approximately, six months are devoted to training in telegraphy. Balance of training is devoted for other subjects. Till 1964, Assistant Station Masters were eligible for recruitment to post of guard C. As already stated, since then, such eligibility is now removed. An Assistant Station Master is now eligible for promotion to higher category of Assistant Station Masters in grade of Rs. 205-280, to posts of Station Masters and those of Assistant Yard Masters. He is also eligible for promotion to post of Traffic Inspectors. 30 per cent of the latter posts is reserved for him in the same way as 30 percent is reserved for guards A and B.

Duties of Guards

8.13. As regards duties of guards, they are either (1) normal duties, or (2) extraordinary or occasional duties. The former are guards' routine functions which they perform every day. The latter are functions which they are called upon to perform when unusual occurrences take place, such as accidents. Though majority of duties which guards of all grades perform are common, their duties differ also according to the types of trains on which they work. There are seven types of trains, of which three are goods trains, two passenger-cum-coaching trains, one passenger-cum-coaching-cum-goods train and one passenger train. These have also been described in S/1 RB/72—26.

evidence as (1) sectional or shunting goods trains, (2) transshipment or van-goods trains, (3) through goods trains, (4) parcel trains, (5) mixed trains, (6) passenger trains, (7) mail and express trains, and (8) suburban trains. Sectional, transshipment and through goods trains are conducted by guards C, passenger trains by guards B and mail and express trains by guards A. Broadly speaking, though duties of guards differ according as they work goods or passenger trains, duties performed by all guards are more or less typically the same.

Duties of Loco running staff

8.14. Drivers of all grades have to perform duties almost of the same kind except that drivers on electric traction are required also to perform duties in regard to electric system of engines. Duties performed by diesel engine drivers are more or less the same as those of steam engine drivers. In fact, diesel engine drivers are usually drawn from ranks of steam engine drivers, the only requirement being that they should receive training in deselisation for a period of three months before being called upon to discharge duties on diesel traction. Therefore, broadly speaking, to understand duties performed by drivers, it is enough to understand duties performed by driver C of a steam engine. Duties of drivers of mail, express and passenger trains on the one hand and goods trains on the other differ in a few respects but difference arises on account of the fact that the former carry passengers. Duties of firemen C differ according as they are performed in shed or traffic yard or on the run. Duties which shunters perform are different from those performed by drivers but duties which shunters A and B perform are the same. It is not necessary to describe in detail duties of the above categories of running staff since there is no serious controversy in regard to such duties.

Hours of duties and rest periods

8.15. However, as Mr. Kulkarni's arguments were mainly based on conditions of service of guards and drivers, it is necessary to refer to such conditions, specially in respect of their hours of duties in regard to which they are governed by HER. Not only guards and drivers, but, all other members of running staff are governed by those rules and their conditions of service are almost the same except in regard to shunters and firemen engaged on shunting engines.

8.16. Broadly speaking, running staff are classified as continuous servants. Therefore, they are liable to perform duties for 231 hours in a month or 108 hours in two weeks like other continuous railway servants. However, hours of work of this staff are bound up with train movements. Their liabilities for performance of duties are so fixed as to ensure as less an interference with train movements as possible. The system on which running staff work is designed to ensure the above objective and is almost the same for all categories of running staff although there are minor differences amongst them. Rules on the above subject in force on Western Railway and Northern Railway have been brought on record. The following

picture emerges from a perusal of Operating Manuals of these two railway systems. Running staff are liable to be called for duty at any time. They cannot absent themselves from their headquarters or their out-stations without permission of their superior officers. Working hours of running staff differ according as they work on fixed schedules, i.e. on links, or not. Rosters of all members of running staff are prepared and displayed every day. However, those who operate on links know in advance their schedules and pick up trains according to the time-tables in respect of trains assigned to them. Those who do not work on such links—and by far the main crew which do not do so are the crew of goods trains—work on the principle of first-in-first-out. When staff work on fixed schedules, they sign their bookings for next trips at the time of signing-off duty for their previous trips and, in their cases, calls are not necessary unless changes happen to take place in schedules. However, in case of running staff who work trains in rotation, ordinarily, calls are given to them about two hours before they are due to report for duty. Running staff are required to sign call book and, if they happen to be absent, a verbal notice is left at their headquarters or running rooms, discretion being left to the authorities concerned to send a written notice, if required. Whilst at headquarters, running staff are required to instruct their servants or members of their families to accept call book notices. If running staff do not turn up on duty or do not send information three hours before they are due to report for duty, they are to be marked absent. A remark in call book that the concerned employee is sick is not accepted as due notice in the matter. Members of running staff, however, are liable to calls for duty at an earlier hour and at less than two hours' notice if their superior officer deems it necessary. Running staff have to report for duty some time before the actual departure of trains on which they are to work. According to evidence, such hours differ from two hours to about thirty minutes in the case of traffic crew and one and a half hours to forty-five minutes in the case of engine crew. Duties which running staff perform after departure of a train are described as running duties. Normally, running staff perform ten hours' running duty but they are liable to do so for a maximum period of fourteen hours with an option that, if they want to be relieved after twelve hours of running duty, they should give notice of at least two hours to the required authorities after a lapse of ten hours' running duty. According to the Report of the Railway Accidents Inquiry Committee, 1968, (hereafter called the Wanchoo Committee), about 14.2 per cent of the total number of trips in 1967-68 involved performance of duties of not less than twelve and not more than fourteen hours and about 1.6 per cent of such trips involved performance of duties beyond fourteen and upto twenty hours. HER prescribes definite hours of daily and weekly rests for running staff. They enjoin on the administration to give twelve hours' rest to such staff at headquarters after every trip of eight hours' duty or more and eight hours at out-stations. The prescribed weekly periods of rests are four rests of thirty hours with a night in bed or five such periods of twenty-two hours with a night in bed. However, this does not debar an administration from calling upon running staff to perform duties by cur-

tailoring their daily rest hours. In the latter case, they are paid a special allowance known as breach of rest allowance. Running staff are accorded running room facilities which consist of rooms furnished with beds, sheets, pillows and toilet facilities. They are also provided with kitchens manned by cooks. These cooks prepare, free of charge, meals for running staff from rations brought by them, or prepare meals for which charges are levied according to scheduled tariffs. Though these facilities, wherever they exist, can also be availed of by other travelling staff on railways, such staff are not guaranteed such accommodation, nor can they avail themselves of services of cooks free of charge. Whenever railway administrations are not able to provide such running room facilities, running staff are paid a special allowance in lieu of running room facilities. When running staff travel spare on duty, their first four hours of travel are not considered as duty, but, for anything in excess, two-thirds thereof is considered as duty. However, in this latter regard, running staff stand on the same footing as other railway employees who are governed by the same rules on the subject of travelling spare on duty. When running staff are provided with reserved accommodation in train or travel in crew-van, such travel is considered to be rest.

Methods for remunerating running staff

8.17. It will be convenient at this stage also to mention the method adopted for remunerating running staff. It is common ground that this is done by payment of a sum determined on the basis of pay-scale for such category and a further sum determined on the basis of an allowance described as running allowance. "Running Allowance" is defined as an allowance ordinarily granted to railway servants "for the performance of duty directly connected with the charge of moving trains and include mileage allowance or allowance in lieu of mileage but exclude special compensatory allowance." "Mileage Allowance" is defined as one granted to running staff "calculated at the rates and computed in the manner specified in the rules." Record of this case does not throw any light about the origin of running allowance but there is reason to believe that such an allowance has been in existence since long past. Rates of running allowance have changed from time to time and it is stated that the rates underwent revision as many as three or four times since pay-scales of running staff were fixed by the Second Pay Commission. These rates are paid on the basis of 100 kilometres of train run and at present vary from Rs. 5.40 for drivers A to Rs. 1.60 for firemen on shunting engines. In case of shunters and firemen working on shunting engines, kilometrage is calculated at 15 kilometres per hour from signing-on to signing-off. It appears that, prior to 1947, pay-scales of running staff differed from railway to railway, though it is a fact that each railway paid a running allowance in addition to emoluments according to pay-scales. The question of determining emoluments of running staff came to be considered by the Central Pay Commission, 1946-1947 (hereafter called the First Pay Commission). That body observe in their Report that, in determining the emoluments of such staff, they are faced with

two problems. One is that different basic scales of pay obtain in different railway systems; the second is that, in all railways, the practice is for such staff "to earn fairly substantial amounts every month under the head of running etc. allowance". The First Pay Commission further observe as follows in regard to running allowance: "It seems to be recognised that, though called an allowance, the running allowance is, to a large extent, part of the pay of the staff." Further on, they say:

"In the course of the evidence, we felt that this system of disbursing a substantial portion of the pay in the form of allowance was not satisfactory and we learnt that that view was also shared by the Railway Board and the Board had been in correspondence with the Railway Administrations with a view to modifying that system, incorporating a large percentage of the allowance with the pay. We are, however, informed by the Chief Commissioner and the General Managers that the 'Running Allowance' system could not be wholly dispensed with because the payment of some allowance was necessary to give the administration control over the work done by the running staff. The exact manner in which this portion of the allowance can be separated from the portion which forms part of the salary is now under the consideration of the Board. It looks as if it will be some time before the Board can reach a satisfactory conclusion on this matter."

The Commission further observe that, in view of the above state of affairs, it is open to them either to recommend what may seem fair total emoluments for different grades for each of the above categories of running staff or to recommend what they may consider fair basic scales of pay. They find that their attempts on the lines of the former method do not produce any satisfactory results as they cannot obtain complete information as to what amounts the categories of running staff were earning during recent years on different railways. Therefore, they come to the conclusion that, without such detailed information, they may affect running staff prejudicially if they were to fix total emoluments on some arbitrary figures. They further remark that if, they were to adopt the second course, they must note that, with the increase of the basic pay, the allowance will also automatically increase as they generally bear a certain proportion to the basic pay and this may lead to an increase in the amounts of the total emoluments beyond what they intend. On the above grounds, the First Pay Commission suggest a kind of ceiling limit as an interim proposal. Ultimately, the Commission recommend what they call "basic scales of pay" for the running staff and running allowance in accordance with the existing rules, with a proviso that those allowances must not exceed the average monthly running allowance drawn by an employee during 1946 or part of that year, if appointed during that year. The Commission further state that if any radical change comes about as a result of the Adjudicator's Award, those scales as well as scales that are suggested for other categories of staff affected by the Award may have to be revised. In December 1947, the Railway Board accepted the pay-scales prescribed by the First

Pay Commission but, as the hours of work were reduced by the Adjudicator's Award in July 1948, the Running Staff Pay and Allowance Committee (hereafter called RSPAC) was appointed. This Committee went into the subject of running allowance in detail and, in paragraph 27 of its Report, formulated its conclusions on the subject. These conclusions (which are important) are mentioned by the Committee in para 27 *ibid*. The conclusions are as follows:

"27. In the light of the data furnished and the views expressed by the Railway Administrations, the Committee have reached the following general conclusions:—

- (a) That the basis of payment of Running Allowances should be standardised with a view to its adoption uniformly on all Railways and that Running Allowance should be correlated to work done.
- (b) Increase in the levels of the Basic pay of Running Staff would necessarily involve a reduction in the proportion which Running Allowances bear to basic pay on the hypothesis that total emoluments are not materially altered.
- (c) The monetary value of the Running Allowances must continue to represent a substantial proportion of the basic wage, the proportions necessarily depending on the variations in the mileages performed by the same grades of staff on different railways.
- (d) Despite the variations in the earnings accruing in the form of Running Allowances, the requisite inducement would not be lost if the Running Allowances, on an average, range from 60 per cent to 80 per cent of the increased basic pay for Loco staff generally, and from 40 per cent to 50 per cent of the increased basic pay in the case of the Traffic Running Staff."

In paragraph 50, the RSPAC states that four objectives should be borne in mind in formulating the basis for reckoning running allowance in the future pay structure. One of the objectives mentioned in clause (iv) is relevant and is as follows:

- (iv) The Running Allowance should not only cover the out-of-pocket expenses incurred by Running staff when working trains away from Headquarters, but must include a substantial payment to provide the necessary 'incentive' to ensure good out-turn of work."

Then, in paragraph 51, the RSPAC remarks that mileage system "offers the simplest and the soundest basis for computation of Running Allowance and provides the requisite incentive to Running Staff to exert themselves to the utmost in speeding up movement and discourages dilatory methods of work." Then the RSPAC proceeds to consider

criticisms that can be offered against the above system. It says that the only criticism that the system lays itself open to, is that it singles out running staff for discriminatory treatment for faults and errors of other operating staff, who either fortuitously or by design, retard movement of traffic. It further points out that delays in train movement can and do take place for faults of staff other than running staff and that to single out drivers and guards is tantamount to punishing running staff for faults of those others. Though the Committee describes this criticism as plausible, it also says that it is not without any force. The Committee, however, comes to the following conclusion :

“The Committee are, however, inclined to the view that detentions to traffic on the road are incidental to operation and Running Staff must take the rough with the smooth, and payments made to them in the form of Running Allowances should, on the average, work out to their advantage. Payments made by the mile would indeed spur them to check dilatoriness on the part of other Operating Staff. If Running Staff are paid by the hour and not by the mile, this check over other Operating Staff would disappear and lead to general deterioration of speeds.”

The Committee further remarks that after the Adjudicator's Award, fixing the hours of work, there is little meaning in reckoning running allowances on the basis of hours put in by running staff as they remain more or less constant. It says “This would be tantamount to payment of a fixed sum of money without any distinction being made between a keen person who exerts himself in a variety of ways to quicken movement and give the highest mileage performance, and a sluggard.” As a result of recommendations of the RSPAC, scales of pay and running allowances were revised by the Railway Board further and orders were issued in December 1948. However, later on, a Joint Advisory Committee (hereafter called the JAC) was appointed which considered scales of pay and running allowances further. The JAC recommended modifications of scales of pay for certain categories of staff. These recommendations were implemented in 1950. In August 1957, scales of firemen and shunters were further reviewed in the course of deliberations with the NFIR and, as a result, the lowest grade of shunters was abolished and all leading firemen other than firemen grade A were placed on a uniform scale. In November 1957, the two grades of scales were merged into one scale, also as a result of deliberations with the NFIR. Then came the Second Pay Commission. The Commission consider the subject of running allowances in paragraph 28 of Chapter XXII of their Report. The Commission observe as follows :

“A substantial portion of the total emoluments of running staff is in the form of running allowance, a factor which has to be borne in mind when determining their pay scales. It is paid as an incentive for the safe and punctual movement of trains; and a small portion of it is intended to cover travelling allowance.”

Then the Commission refer to the observations made by the First Pay Commission and those made by the RSPAC. In paragraph 42, the Commission consider the question of pay-scales of running staff. They observe as follows :

“In recommending pay scales for running staffs, we have taken into consideration the existing relativities between their pay scales, and those of other comparable categories in stationary posts, which, at present, follow, broadly, a uniform pattern. The second important consideration is that a substantial portion of remuneration of the running staffs is in the form of running allowance, to which stationary staff are not eligible. Thirdly, at higher levels, running staffs are transferable, or are promoted to stationary appointments, when they cease to get running allowance. Having regard to all the relevant factors, we do not recommend a change in their pay scales or in the relativities of running staffs, except in the case of Shunters, and C Grade Drivers.”

Then the Commission recommend that pay-scale of shunter A should be revised from Rs. 60-150 to Rs. 80-150 and that of shunter B should be revised from Rs. 75-105 to Rs. 80-110. The Commission further recommend that the starting point of the scale of pay of driver C should be revised from Rs. 80/- to Rs. 100/-. Then, in paragraph 47, the Commission recommend the scales of pay for different categories of running staff. The present pay-scales which have been mentioned in paragraph 8.3 in this chapter are based upon recommendations made in para 47 *ibid*, except that a slight modification was made in case of motor-men by the Railway Board towards the end of 1963. Annexure II of the Railway Board's Reply shows different scales of pay of various categories of running staff from time to time as mentioned hereinbefore.

8.18. Running allowances are treated as pay for certain purposes in case of running staff drawing pay in authorised scales of pay. 60 percent of pay is added to the scale pay for the purpose of issuance of Passes and PTOs. Subject to a ceiling of 75 per cent of scale pay, running allowance is considered to be pay for the purpose of leave salary, medical attendance and treatment, educational assistance and retirement benefits. 40 per cent of pay is added to the scale pay for fixing pay in stationary posts, compensatory (city) allowances, house rent allowance and rent of railway quarters. Subject to a ceiling of 75 per cent of the scale pay, running allowance is considered as pay for the purpose of contribution to the State Railway Provident Fund. Though formerly 40 per cent of running allowances was considered as pay for Income-tax purposes, according to the latest orders, only 10 per cent thereof is considered as such. Running allowance is also considered to be pay for calculating officiating allowance for running staff officiating in higher grade posts and for determining pay of running staff utilised in stationary appointments for period not exceeding 21 days.

8.19. In addition to running allowance, running staff is also paid a number of other allowances, such

as, overtime allowance, special compensatory allowances, (such as allowance in lieu of running room facilities out-station detention allowance, accidents allowance, out-stations relieving allowance), specially arduous running duty allowance, short trip allowance, less arduous duty allowance and breach of rest allowance. In calculating some of these allowances even a part of the prescribed period of 24 hours is taken into consideration.

Extraordinary duties of running staff

8.20. According to evidence, unusual occurrences which running staff have to deal with are as follows : (1) accidents, (2) fire on trains, (3) train parting, (4) falling of passengers, (5) breakage of couplings and draw-bars, (6) murder on trains, (7) running over of passengers and animals, (8) alarm chain pulling, and (9) hot axles.

8.21. According to Sinha, train accidents are divided into two categories, (1) consequential, and (2) indicative. Consequential accidents are those which have the potential of causing loss of life, limb or property, such as collisions, derailments, fires on train and accidents at level crossings. Indicative accidents are those which do not result in such consequences but are indicative of a lacuna in the working conditions of staff or their habits which may lead to consequential accidents, such as drivers passing danger signals, breach of block rules, train partings and averted collisions. According to Sinha, the number of consequential accidents has decreased from 2207 in 1960 to 963 in 1969-70. However, in instituting this comparison, one must take into account the change in the definition of "fire accident" which came in 1964-65, as a result of which the number of fire accident cases came down from 400 to 80. But, according to Sinha, the cases which came to be excluded under this head as a result of the change in the definition will be included in the second category of indicative accidents. Sinha says that the number of indicative accidents came down from 1557 in 1964-65 to 658 in 1969-70. The bulk of accidents in consequential category is derailments and that in the indicative category is train partings. Collisions and other indicative accidents are more serious but their incidence is much less. Sinha says that, if the change in the definition of "fire accident" is not taken into account, then, 320 cases may be added to consequential accidents and the total number of consequential accidents will be 1283 in 1969-70 as compared to 2207 in 1960. According to Sinha, the number of accidents per million kilometrage is now just under 1 whereas formerly it was slightly over 2. Therefore, in his opinion, the number of occasions on which running staff is called upon to perform emergency duties is much less than before. There is nothing to doubt evidence of Sinha on the above subject and I hold that the number of accidents during the last ten years has declined significantly.

8.22. In case of an accident, a guard is to take immediate measures for protecting his train and engine and the other train crew have to help him in the discharge of this duty. As soon as an accident takes place, a driver's duty is to protect the opposite

line immediately and, then, act according to the instructions of the guard. The guard has to establish contact with the Station Master of the nearest station and Train Controller, if necessary, by using portable telephone. He has also to take measures for rendering such service to passengers and such first-aid to them as he and train staff can. In case of fire in a train, he is required to remove kent couplers and isolate the affected carriage electrically by removing the fuses and cutting dynamo belt and, in case of a goods train, he has to bring water from engine or nearby pond, if necessary, by drawing the train to the pond, and extinguish the fire. In case of train partings, he is required to ascertain the cause and, if coupling is broken, he has to replace it. If it is for some other reason, then, he has to take measures for protecting the train and to consult the driver as to how the train is to be worked. If the train can be carried in two instalments, he can do so only in case of a goods train but not in the case of a passenger train. In the former case, he must give a memo to the driver, note the number of the last vehicle and take over possession of the token line clear. He has to confer in the memo authority on the driver to return light and protect the train in front. The driver must bring back the engine light at a safety-point and bring it upto the load slowly. In case of murder on train, a driver is required to detach the concerned bogie at the station in case of a murder in a second or third class bogie without interfering with the corpse, after closing doors and windows from outside and locking it before detaching. But, in case of a murder in a first class bogie, the bogie need not be detached though he is required to take the same action as in case of second and third class bogies. If the police is available, a policeman should be put in the adjacent compartment. He is required to issue an immediate message to replace the first class bogie at the next station and a special report to his superior officers. In case of running over, he is to halt the train, bring it back and stop it a little away from the scene of running over, except in Ghat and automatic sections. If the man is alive, he must give him first-aid and take him to the station where first-aid is available. If he is not alive, the corpse must be arranged to be guarded; or else, it should be carried and handed over to the gateman at the next gate. In case of animals, he must clear the track but the train must not move back and special reports must be made to superior officers. In case of alarm chain pulling, he must go to the compartment concerned and ascertain the cause for chain pulling and render such assistance as he can. But if the chain puller cannot be ascertained, he has got to take measures for identifying him and, for that purpose, he may post one of the train crew in that compartment. In case of hot axles, he should stop the train, examine its condition, get waste matter removed, oil it and take the train at cautious speed to the next station and detach the vehicle unless the train examining staff certifies it to be fit. In case of breakage of couplings and draw-bars, he has to get them replaced.

Alleged increase in duties in recent times

8.23. The Federation contends that duties and responsibilities of running staff have increased in

recent times, especially during the last ten years, and the increase is due to the circumstances mentioned in evidence. Krishan mentions these circumstances as follows : (1) increase in train load, (2) increase in number of wagons, (3) increase in number of trains, (4) increase in speed of trains, (5) withdrawal of brakemen from all shunting trains and some mixed passenger trains, (6) withdrawal of luggage guards accompanying chief guard, (7) withdrawal of conductor-guards from passenger trains, (8) introduction of registers in which guards have to write particulars of equipment to be handed over to reliever, (9) undertaking of responsibilities as carriers on payment of higher percentage charges, (10) provision of portable telephone and electric equipment, (11) increased attention to public, (12) general increase in number of passengers, specially due to holiday rush, (13) excessive alarm chain pulling, (14) creation of new block stations, (15) withdrawal of pointsmen from stations, (16) provision for vacuum gauges as stores, (17) dieselisation and electrification, (18) introduction of anti-telescopic coaches, (19) use of fusees, and (20) increase in marshalling responsibilities due to new types of coaches. Ben Morris mentions the following further circumstances: (1) introduction of second para of Rule 135(1) in GSR, (2) supply of complaint book, (3) travel by VIPs, and (4) withdrawal of responsibility for shunting operations on wayside stations from ASMs and imposition thereof on guards.

8.24. Some aspects of modernisation of the railway system and trains are also alleged to have increased duties and responsibilities of running staff. Amongst these are mentioned : (1) introduction of automatic vacuum brake system, (2) introduction of dynamic brake system, (3) introduction of (i) multiple aspect upper quadrant signals, (ii) multiple aspect colour light signals, (iii) automatic signals, (iv) additional warning signals, (v) track circuiting, (vi) driver's vigilance control system, (vii) speedometers and speed recorders on diesel engines, (viii) minor gadgets such as pyrometer sticks, (ix) fusees, (x) ultrasonic flaw detectors, (xi) scragging machines, (xii) mechanical tie-tampers for mechanical track maintenance, and (xiii) quick-application QA/QR valves.

8.25. (i) The Federation has not given clear evidence about increase in train load. Krishan has given some figures in regard to specific trains where, according to him, the number of coaching vehicles has increased from 12 to 15 in one case and from 12 to 17 in other cases; increase in number of wagons in case of sectional trains has been from 30 to 35 to 40 to 50 and, in case of transshipment trains, from 50 to 60. Krishan deposes that, in case of goods trains, increase in load is confined to through goods trains only. Mr. Kulkarni has furnished a statement of the average train load in terms of four-wheelers, prepared on the basis of the Railway Board's Reports. From this statement, it appears that the average train load on all passenger-carrying trains on Broad Gauge for all the Indian Railways in all tractions has increased from 19.5 to 21 between 1960-61 and 1968-69 and the average load of goods trains in terms of four-wheelers on

Broad Gauge has increased from 53 to 59 between 1960-61 and 1968-69. Sinha gives increase in terms of average train load. Average train load is arrived at by taking the total load carried by trains in each class collectively and dividing it by number of trains run in that class. According to him, the average number of wagons for goods trains in terms of four-wheeler units on BG during the last ten years has increased from 51 to 60. He does not remember the exact figures for MG but says that the increase is of the same order. According to him, increase in train load is not uniformly distributed amongst all trains and that increase is more pronounced on goods trains running on trunk lines. Mr. Mahadevan relies on the following figures culled from The Supplements to The Reports By The Railway Board For 1960-61 and 1968-69 in regard to increase in loads of goods trains in terms of four-wheelers. According to those figures, increase during the period 1960-61 to 1968-69 has been from 50 to 60 wagons on BG and 43 to 46 on MG and that increase, during the same period, in terms of units of wagons has been from 2,04,104 to 2,66,367 on BG and from 82,924 to 90,920 on MG. Therefore, according to him, the increase has been of the order of 24 per cent in terms of units of wagons. He further says, on the strength of the same books, that increase in terms of four wheelers has been of the order of 44 per cent. Because of the above published figures, Mr. Mahadevan has no recourse but to admit that there has been an increase in haulage of goods. However, he contends that, having regard to dieselisation and electrification, the increase in load must be regarded as insignificant. I cannot agree with this contention. In order to determine the question of increase in train loads, I am not concerned with the question of the cause or causes which led to such increase. It may be that, having regard to introduction of dieselisation and electrification, increase in train loads may not have been commensurate with increased capacity of trains to carry loads. But, for the purpose of resolving the above dispute, I am concerned only with the simple question as to whether there has been an increase in train load and, if so, what is the extent thereof. In my opinion, the above facts, figures and evidence do justify the conclusion that there has been, during the last ten years, a significant increase in loads carried by through goods trains.

(ii) Sinha admits that there has been a great increase in number of passenger and goods trains recently and that, therefore, train kilometrage has doubled in the last ten years. However, he maintains that staff has increased also with increase in train kilometrage but dilutes this admission by saying that efforts are being made to curtail increased requirement of staff by better staff management and by introduction of crack and other linked goods trains. Therefore, according to him, increase in the number of trains is not proportionate to increase in the number of passengers and goods. He deposes that, by better staff management, he means shifting of existing headquarters of staff. In cross-examination, he admits that, in doing so, links may be established in such a way that running staff may have to skip headquarters and that this may entail increased number of times of

rest available outside headquarters, thereby curtailing periods of rest of staff from 12 to 8 hours. However, he maintains that this does not mean longer hours of work. Mr. Mahadevan submits that the above evidence is not in accordance with figures published by the Railway Board. In this connection, he has given two statements in which he has furnished figures of running staff for the years 1960-61 and 1968-69 and train kilometrage for the same years for trains on broad and metre gauges. According to the statements, whereas increase in train kilometrage is of the order of 18.6 per cent, increase in number of staff is of the order of 25 per cent. On the basis of the same figures, Mr. Kulkarni has given another statement in which he works out the ratio of percentage increase in train kilometrage and percentage increase in running staff in a different manner. According to this statement, the ratio is 5.5 per cent. From the latter statement, Mr. Kulkarni contends that, actually, though increase in train kilometrage is 18.6 per cent, increase in staff is only 5.5 per cent. I cannot agree with Mr. Kulkarni. In the ratio worked out by Mr. Kulkarni, increase in train kilometrage and increase in staff both are included and 5.5 per cent represents excess of staff over train kilometrage. However, the above figures do not give a correct idea as to whether there has been commensurate increase in number of staff with increase in number of trains. Increase in train kilometrage may be due to a large number of factors other than increase in number of trains. Therefore, unless increase in number of trains is correctly known—and for this there are no materials on record—it is not possible to get a correct idea on the above subject. Nor is it possible to say that Sinha's evidence cannot be relied upon. In this connection, Mr. Mahadevan admits that number of staff that should increase with increase of one train will be four times three, the figure four representing train crew and figure three representing shifts for which the train will be operated. On the whole, I have come to the conclusion that though there is reason to believe that a part of increase in number of trains is off-set by better staff management, increase in number of staff is more or less commensurate with increase in the number of trains.

(iii) Speeds of trains are computed in four ways : (1) average, (2) maximum permissible, (3) booked, and (4) actual. Sinha mentions that average speed of passenger trains on BG and MG is 100 kilometres per hour and 80 kilometres per hour respectively and that of goods trains on BG and MG is 64 and 40 kilometres per hour respectively. Sinha further says that average speed per hour of through goods trains has increased in a big way because of dieselisation but that of other types of goods trains, such as works trains and SQTs, has gone down because of saturation of capacity. Sinha also says that average speeds, in case of through goods trains, have increased, during the last ten years, from 12 kilometres per hour to 18 kilometres per hour. Sinha also says that average speeds have actually gone down in some sections because of heavy engineering works though, on metre gauge, they have increased in some cases and decreased in some others. Sinha further says that maximum permissible speed has remained constant during the last ten years except that, in case of Rajdhani Express

and passenger trains on Howrah-Delhi grand trunk route, maximum permissible speed has gone upto 120 kilometres per hour. Krishan has mentioned booked speed of WP engines as 80 kilometres per hour, that of electric engines as 105 kilometres and that of diesel engines as 40 to 45 miles (*i.e.* 63 to 72 kilometres) when they haul goods trains. However, in considering the above speeds, it is necessary to bear in mind that all trains do not necessarily run according to those speeds. Booked speeds and maximum permissible speeds are prescribed for locomotives and not for trains and these speeds are subject to a number of restrictions depending upon type of rolling stock and type of track on which locomotives run. It is also necessary to bear in mind that booked speeds are 5 to 10 per cent lower than maximum speeds since time is allowed for acceleration and deceleration to enable drivers to recover lost time. It is also necessary to bear in mind that, in arriving at average speed, detention times are also included. Therefore, it is clear that average speeds or booked speeds do not necessarily give a correct idea of actual speeds of trains. However, having regard to the fact that, according to Sinha, average speed of through goods trains has increased from 12 kilometres to 18 kilometres per hour and the broad fact that through goods traffic is now mainly hauled by diesel engines, booked or maximum permissible speed of which is higher than that of steam engines, there is no doubt whatsoever that actual speeds of through goods trains must have increased in a big way. Mr. Mahadevan, however, attempts to contest the evidence of Sinha on the basis of figures published by the Railway Board in the book entitled "Indian Railways—1968-69". On page 36, item No. 8, it has been mentioned that, on BG, increase of average speeds of all goods trains between 1950-51 and 1968-69 has been only from 17.4 to 17.5 kilometres per hour; that, on MG, speed has, during the same period, decreased from 15.0 to 14.5 kilometres per hour and that, on BG, between 1960-61 and 1968-69 increase has been from 16.1 to 17.5 kilometres per hour and that, on MG, 13.7 to 14.5 kilometres per hour during the same period. I do not think that this contest is justified. Probably, the above figures represent average speeds whereas Sinha deposes about booked and maximum permissible speeds. Under the circumstances, in my opinion, there is no reason to doubt the correctness of the evidence given by Sinha as regards increase in speeds of through goods trains. It is true that burden on a train or engine crew does not depend upon maximum permissible or average speeds of trains but it depends upon booked or actual speed at which any particular train is timed to run or actually runs. However, in my opinion, the above evidence and facts justify the conclusion that speeds of through goods trains have increased considerably, specially on those tracks which have been dieselised.

(iv) Krishan's evidence is that brakesmen were provided on all sectional trains until two years ago on Central, South-Central and Southern Railways but he cannot say if they were provided on all other Railways also. It appears that, formerly, all goods trains were not provided with automatic vacuum brakes and such of the trains as were not so provided were fitted with partial brakes, *i.e.* half the train was

with automatic vacuum brake and the other half was not. In the latter types of trains, one more brakevan was provided. Therefore, the second brakevan had necessarily to be manned by a brakeman. After the provision of automatic vacuum brake, it is clear that the second brakevan will have to be withdrawn and so also the brakeman. It is true that evidence discloses that, in those cases where a brakeman was provided, the brakeman used not only to apply brakes in the second brakevan but he also used to render assistance to guards in performance of a number of duties. However, this was so not because assistance of a brakeman was necessary to be given to a guard but because assistance of a brakeman was available. Moreover, there is no reason to believe that this was so on all sectional goods trains, nor is there any reason to believe that guards on trains which were not provided with second brakevan or which were fully provided with automatic vacuum brake system were given or required assistance of brakemen. Under the circumstances, I am not prepared to accept the contention of the Federation that duties of guards have increased because of withdrawal of brakemen. The fact appears to be that duties of guards from whom brakemen have been withdrawn have been brought on a par with duties of guards who were not provided with such assistance. As regards the allegation of withdrawal of brakemen from mixed passenger trains, there is no direct evidence on the subject. Krishan's evidence on the point is hearsay and is based merely upon receipt of complaints by his Union, the veracity of which does not appear to have been ascertained.

(v) Evidence of Krishan that luggage guards were provided on North-Western Railway is based upon his own experience, when he was employed on that Railway. But he admits that, in 1947, no such luggage guards were provided on Central Railway. Therefore, the practice of providing luggage guards does not appear to be a uniform practice on all Railways.

(vi) Krishan's evidence is that conductor-guards have been withdrawn from passenger trains. However, evidence shows that such conductor guards have been replaced by conductors. Krishan says that the latter cannot be regarded as successors of conductor-guards inasmuch as the latter were fully qualified guards, were well-versed in commercial duties and helped principal guards in performance of their duties except that they could not have performed duties of guards devolving on them at originating stations, that they could not have been delegated safety duties and that they could not have given orders for starting trains. However, though this is so, there is no doubt that conductors who have replaced conductor-guards perform certain duties which relieve guards of some of their responsibilities.

(vii) There is no challenge to the evidence that guards have now to enter particulars of equipment to be handed over to their relievers in a register and that railways are now undertaking responsibilities as carriers on payment of higher charges.

(viii) Portable telephone and electric equipment are provided only on (1) mail and express, (2) passenger, and (3) mixed trains. This facility is of great

assistance to a guard during unusual occurrences. It enables the guard to establish contact with the other authorities as speedily as possible and enables him to obtain instructions from them and assures him of the assistance which he is likely to get. It is true that he has to carry portable telephone to telephone pole and join the same to telephone wires. However, I agree with evidence of Sinha and the submission of Mr. Mahadevan that this burden is compensated by the mental assurance which it gives to a guard in emergent circumstances. Moreover, having regard to the fact that average number of consequential and indicative accidents stands at sixteen hundred and number of guards operating on Indian Railways is sixteen thousand, the number of occasions on which a field telephone will be used will be once in ten years. Even if guards use the above facility on some other occasions including occasions on which passenger trains are detained for ten minutes or more, use of portable telephone cannot be frequent.

(ix) There is some force in the contention that, having regard to increase in number of passengers, specially due to holiday rush, and having regard to the fact that greater attention has to be paid to public in several matters, duties of guards have increased in recent years in this regard. But important trains have now been provided with either coach attendants or conductors whose duty it is to cater to the needs of first class passengers in certain matters. Travelling Ticket Examiners have also been assigned duties of looking after sleeping arrangements of second and third class passengers. It is true that the above facilities do not relieve guards of their overall responsibilities in regard to attention to public, but, at the same time, there is no doubt that the above staff do relieve guards of some of their duties to passengers and guards now will be required to take action only in those cases where the above staff are either unable to attend to passengers' needs or passengers are not satisfied with duties performed by the latter. The provision of the above assistance must also be borne in mind whilst assessing increase in duties of guards under this head.

(x) There is no doubt whatsoever that incidence of alarm-chain-pulling has increased tremendously in recent times and that, according to the latest figures, that incidence has increased about four times. This is not disputed by Mr. Mahadevan.

(xi) Though evidence is that block stations have increased in recent times, the extent of increase has not been brought out in evidence. According to Krishan, in Bombay Division, number of block stations have increased by five during the last ten years. Mr. Kulkarni concedes that increase of block stations on all Indian Railways is on the whole of a small order. There is no reason to believe that increase in number of block stations increases work of guards by congesting work between two block stations.

(xii) Evidence that pointsmen have been withdrawn from wayside stations is not challenged. According to Ben Morris, one pointsman has been reduced at wayside stations and, therefore, guard C

has now to set and re-set points with assistance of sweeper-cum-porter who is not qualified to do the above work.

(xiii) Formerly, carriage and wagon staff used to fix and maintain vacuum gauges. Guards of goods trains are now required to carry such gauges as portable stores and fix and remove them in their respective brakevans when joining or going off duty.

(xiv) Ben Morris admits that dieselisation and electrification by themselves do not increase burden of guards except in so far as they increase train loads and speeds of trains. Both these latter questions have already been considered separately.

(xv) Evidence discloses that instructions are that anti-telescopic coaches, which have been recently introduced, should be marshalled immediately after an engine and at the end of a train. As a result of these instructions, guards are required to ascertain, before starting a train, that anti-telescopic coaches have been marshalled as prescribed.

(xvi) Provision of fusees ought to be of considerable assistance to guards inasmuch as fusees will help them, in cases of emergencies, to take prompt protective measures in very short time and, in circumstances, in which ordinary devices will not prove to be of much assistance. Krishan admits this, but, according to him, this facility increases burden of guard inasmuch as both his hands become occupied when carrying a fusee from one place to another and that it prevents guard from discharging his other duties. In my opinion, this is exaggerated evidence. I accept the evidence of Sinha that fusees can be fixed on stays and that, therefore, guard can perform his other duties.

(xvii) The second para of SR 135(1) was introduced in 1961. It provides that, during precedence of trains, guard of the first arriving train, if not otherwise busy in shunting operations, etc., shall remain alert and exhibit danger signal in case he finds any irregularity in setting of points or taking "off" signals for approaching trains. It adds that the above provision does not absolve a Station Master of his overall responsibility to satisfy himself that conditions for taking "off" signals were carried out. This rule undoubtedly requires a guard to exhibit danger signal, but only if he is not otherwise busy.

(xviii) After supply of complaint books to guards, it is their duty to make them available to passengers who wish to make a complaint. If and when they are called upon to give any explanation with regard to a complaint, it is their duty to do so.

(xix) Guards are required to attend to special needs of VIPs and MPs. However, increase in work due to performance of this duty is not brought out in evidence.

(xx) SR 148 has been recently amended so as to require guards to perform shunting duties. Ben Morris' evidence is that, on Southern, Mysore State and Ex-MSM Railways, shunting operations at S/1 RB/72—27.

wayside stations were the responsibility of ASMs and not of guards. However, he is not aware whether the same practice prevailed on other railways. There is reason to believe that change made in the responsibility of guards on the aforesaid railways is made with a view to bringing the responsibility of guards operating on those lines on the same level as their responsibility on other railway systems.

True character of running allowance

8.26. From the above discussion, it is quite clear that emoluments of running staff consist of two elements : (1) pay, determined on the basis of pay-scales, and (2) running allowance based on total kilometrage turned out during a month. Though both sides are agreed that running allowance consists of a payment for out-of-pocket expenses, they are not agreed as to what the balance thereof is composed of. Mr. Kulkarni's submission is that the balance of running allowance is not a part of pay of running staff. He submits that it is paid to running staff as an incentive for putting in more kilometrage. On the other hand, Mr. Mahadevan contends that the balance is being paid as remuneration for services rendered by running staff and is nothing but a mode of payment. In order to resolve the controversy regarding what should be just and proper scales of pay for running staff, the first important question to determine is whether running allowance contains an element of pay. If it does not, then, the only important question which will arise for consideration will be whether present scales of pay are just and proper. On the other hand, if it does, then, before determining the latter question, the question which will require determination will be whether the balance is or is not composed entirely of pay or whether it does or does not contain some other elements. In my opinion, a number of points converge in favour of the view that running allowance represents a substantial portion of basic pay. Though I have no materials to say what the origin of running allowance is and how it came to be determined originally and how it was determined till all railway systems merged, the RSPAC's finding, on the basis of the data furnished to it, is that monetary value of running allowance represents "a substantial portion of the basic wage" and its recommendation is that the same should continue to do so in future. The First Pay Commission also expresses the same view. It states that running staff earns "fairly substantial amounts every month under the heading of running allowance" and that "it seems to be recognised that, though called an allowance, the running allowance is, to a large extent, part of the pay of the staff." The Second Pay Commission also states that a substantial portion of total emoluments of running staff is "in the form of running allowance." Mr. Kulkarni, however, emphasizes the use of the word "incentive" in some of the above documents. In describing the objectives to be aimed for reckoning running allowance, the RSPAC states that running allowance "must include a substantial payment to provide the necessary incentive to ensure good out-turn of work" and the Second Pay Commission states that it is paid "as an incentive for the safe

and punctual movement of trains." Therefore, contends Mr. Kulkarni, that the balance of running allowance is being paid as an incentive bonus and not as pay. I am unable to agree with this contention of Mr. Kulkarni. In the first instance, the RSPAC does not say that running allowance is an incentive allowance. It only says that it must "include" payment for an incentive. Moreover, the RSPAC makes the above observation whilst describing the objective which must be borne in mind in fixing or revising running allowance in future. It does not purport to describe the character of such an allowance as it then existed. The character of the allowance is described by it in para 27(c) of its Report where it describes it as containing an element of pay. In paragraph 27, clause (a), the RSPAC says that running allowance should be co-related to work done and in clause (b) it says that increase in levels of basic pay of running staff will necessarily involve reduction in the proportion which running allowances bear to basic pay on the hypothesis that total emoluments are not materially altered. Moreover, the expression "incentive" in the above documents is not used in the same sense in which the word "incentive" is used when describing an incentive bonus. Incentive bonus is paid after determination of a certain norm of work and is intended to remunerate for the out-turn which is above that norm. From the discussion of the RSPAC in paragraph 51 of its Report, it appears that that body considers that the mode adopted for calculating running allowance offers the simplest and the soundest basis which provides "the requisite incentive to the running staff to exert themselves to the utmost in speeding up movements and discourages dilatory methods of work." From the same paragraph, it appears that it also thinks that payment made by mile will spur running staff "to check any dilatoriness on the part of other operating staff." That body also states that the scheme of payment should be such as to encourage the maximum output of work within limitations imposed by the Adjudicator's Award in regard to hours of work and that "any dilatory tendency on the part of the running staff which has the effect of slowing up movements must be discouraged at all costs." The same idea is also emphasized by the fact that the proposal for the abolition of running allowance adumbrated by the First Pay Commission was opposed by the Chief Commissioner and General Managers of various railways on the ground that "the running allowance system could not be wholly dispensed with because the payment of the same allowance was necessary to give the administration control over the work done by the running staff." The RSPAC further presents the same idea in paragraph 51 of its Report that a distinction must be made between "a keen person who exerts himself in a variety of ways to quicken movement and gives the highest mileage performance, and a sluggard." Therefore, it appears to me that the word "incentive" has been used in the above documents not in the sense in which it is used in connection with grant of incentive bonus, but, it is used with a view to emphasizing the fact that running allowance is being paid to discourage dilatory tendency on the part of running staff and as a motivation to them to discourage other cognate staff from being slack. There is no reason to believe

that any of the above bodies felt or proceeded on the assumption that all members of running and/or non-running staff were guilty of dilatory tactics or were not putting in the best effort which their conditions of service demanded. That the Railway Board also thinks that way is made clear by preface to its letter No. E(S)—68RS(Committee)/1, dated 16-1-1969, addressed to General Managers in regard to revision of running allowance rules. In that preface, it states that a Departmental Committee was appointed with a view to evolving a system which will meet the needs of electric and diesel traction "and, at the same time, provide incentives for better performance by eliminating factors which lead to a tendency on the part of certain staff to lose time on the run." The expression "inducement" used in RSPAC Report in para 27(d) as describing the character of running allowance also has to be viewed in the sense that it is an inducement for a less keen or sluggish member of running staff to put in a better effort. I have no reason to believe that the word "incentive" is used by the Second Pay Commission in a different sense. If travelling allowance element and compensation for non-provision of running room facilities are eliminated, even then, substantial amount is received by running staff by way of running allowance as compared with their basic pay. It is hardly probable that such a substantial amount can be paid by way of incentive bonus. That running allowance contains an element of pay is made further clear by a number of other circumstances. For a large body of running staff, the whole of running allowance is treated as pay for contribution to the Provident Fund, leave salary, medical attendance and treatment, educational assistance and retirement benefits, subject to the condition that it does not exceed 75 per cent of pay determined according to pay-scales. 60 per cent of pay is added for grant of Passes and PTOs and 40 per cent for fixation of pay in stationary posts and compensatory allowances. 10 per cent of running allowance is considered as pay for income-tax purposes. If running allowance did not contain an element of pay, most probably, it would never have been considered as pay for the above purposes.

8.27. There are some aspects of running allowance which make it a riddle. That the whole of an allowance which contains an element of out-of-pocket expenses should be considered as pay for some of the above purposes is highly paradoxical, though, it is probable that lower percentages for some other purposes may have been fixed to eliminate that part of the allowance which represents out-of-pocket expenses. However, in the latter cases, the rationale underlying fixation of different percentages for different purposes is not evident and this part of the scheme is also equally paradoxical. Wisdom of a scheme under which an employee is paid a part of his remuneration so that a sluggard may put in his best effort is itself open to question. This is tantamount to putting a premium on sluggishness and punishing those who normally put in the best effort. The fact that the kilometrage put in by a member of running staff is not dependent upon his own effort only but is bound up with the concerted effort of a large number of employees such as cabinmen, station masters etc., makes the scheme of pay an odd and

novel scheme. It is odd that an employee's pay should be made to depend upon his ability to induce other members of staff to put in their best effort in the task of speedier movements of trains. It is equally odd that an employee's pay packet should be made to depend upon his ability to goad other staff in performance of duties for which that staff is paid and which such staff is expected to perform in the normal course of its service. It is also odd that a regular worker should not receive a definite pay-packet every month on the basis of service of the same kind rendered every month and that, for rendering the same kind of service, his pay-packet should vary from month to month. However, the above oddities and perplexities have no bearing on the determination of the question of the true character of running allowance. The above factors do not disabuse running allowance of its characteristic as a partial pay, nor do they establish that such an allowance is an incentive allowance in the sense that an effort more than the ordinary requires to be compensated. It is merely a payment which is made for performance of ordinary duty by an employee and the above mode of payment is resorted to with a view to inducing the less keen or sluggish members of staff to put in their best effort. That this is the objective is not only clear from the Statement of Objectives laid down by the RSPAC for reckoning running allowance for the future and the object mentioned by the Railway Board for the appointment of a Departmental Committee, known as Ashruf Committee, to revise running allowance, but, it is also clear from the fact that running allowance is paid to those members of staff also who have not to undertake any running duty at all. As already stated, running allowance is paid also to shunters and firemen who work in sheds and station yards and who are not performing any running duty whatsoever. This is also further emphasized by the fact that running allowance is also considered as the basis for determination of a number of other allowances payable to running staff. That running allowance is not a part of any incentive scheme is further brought out by the fact that the Board has already for consideration before it an incentive scheme and one of the grievances of the Federation is that an incentive scheme has not been brought into existence though orders to that effect have been passed. In my opinion, the cumulative effect of the above body of evidence is in favour of the view that running allowance contains an element of pay. This is not the proper forum for discussion as to whether the balance of running allowance, after deducting therefrom travelling allowance, represents pay only for discouraging sluggishness or for encouraging keenness or whether it also contains an element for some other purpose or purposes. However, there is some evidence to show that a part thereof is in lieu of non-grant of running room facilities. I am not concerned here with the question as to whether a system by which salary is paid in the shape of running allowance is or is not justified. That is entirely a different question. The Commissions and Committees which have had to deal with this problem have expressed different views about the retention or abolition of that allowance. The First Pay Commission feels that the system is unsatisfactory and observes that it learns that that view is also shared

by the Railway Board and that the Board is in correspondence with railway administrations with a view to modifying the system. However, the RSPAC expressed itself in favour of retention of the allowance. It appears to have done so mainly on the ground that it is useful to prevent dilatory tendency of running staff and that it is a good instrument to spur that staff to check dilatoriness of other operating staff. The Second Pay Commission appears to have agreed with the view expressed by the RSPAC. However, as I shall presently show, running allowance is composed of a number of elements which it is difficult to disentangle, though it does contain, as all bodies have remarked, a substantial portion of running staff's emoluments. It is difficult to disentangle all these elements as some of them are shrouded in obscurity. Therefore, determination of the whole or a part of running allowance for some of the purposes mentioned above is more guess work than a reality, and I have no doubt that that must necessarily lead to injustice to one or the other side. If it represents substantial pay, then, the fixation of lower percentages for some of the purposes with which the public exchequer is directly concerned is detrimental to public finance. On the other hand, it is obvious that running staff also suffer some disadvantages. For example, such staff do not earn overtime, dearness, and interim allowances on the element of pay contained in running allowance, nor do they derive any annual increment thereon. It is also quite obvious that, in any future revision of rate of running allowance, the guess work inherent in fixation of the rate will persist. Thus, it is clear that running allowance contains a large number of blind spots and has in-built in it certain disadvantages both for the employer and the employee. I am of the opinion that the above considerations build up a strong case for modification of the system and/or introduction of a system in which the pay element is clearly separated from running allowance. This can be done so far as the present incumbents are concerned either by mutual agreement or by arbitration or some other suitable method. However, I am of opinion that even if this is not feasible for existing employees, the Railway Board should seriously consider abolition of the system so far as future recruits are concerned and introduction of a pay-scale for them which includes the pay element in running allowance and denudes running allowance of its entire pay element and retains in it only the non-pay elements thereof. However, since I am not directly concerned with this aspect of the matter in this Reference, I do not propose to pursue the matter in any further or greater detail. The conclusion which emerges from the above discussion and which is relevant to the present Reference is that running allowance does contain an element and, in the opinion of all important bodies, a substantial element, of pay. Therefore, in considering whether running staff are or are not adequately paid, one must bear in mind that a substantial portion of running allowance represents pay of running staff.

8.28. In view of the possibility of the above conclusion being reached, I mentioned, when Mr. Mahadevan was replying, that, since no evidence on the subject was led for disentangling the pay element in running allowance from the rest, I may not be able

to reach any conclusion or it may be difficult to decide the two vital questions debated before me, namely, as to whether there is any relativity between pay-scales of ASMs and guard C and as to whether, on a job evaluation of various members of running staff, they are or are not adequately paid. In response to my above observation, Mr. Mahadevan submitted a statement in which he attempted to disentangle various elements of running allowance. The statement of Mr. Mahadevan is based on certain hypotheses. The disentanglement is done on the basis of average running allowance and the extraction therefrom of travelling allowance which is payable to running staff according to the rules. Mr. Kulkarni does not take any objection in regard to these two matters except on the ground that the calculation of travelling allowance for a period of twenty-three days is not correct and that the period which should be adopted for deduction on that account should be twenty five days. He also does not challenge the next basis for deduction on the ground that running room facilities are provided. Mr. Kulkarni does not also challenge the period of ten days adopted for calculating the allowance payable in lieu of running room facilities. From the statement of Mr. Mahadevan, it would appear that the pay element for the various categories of running staff ranges from Rs. 201.50 per month in case of driver A to a mere pittance of Rs. 20.70 per month in case of fireman A. However, in the absence of proper data and an examination thereof in depth, in my opinion, it is not proper to take figures furnished by Mr. Mahadevan as representing any reality. In the first instance, the figures are based on average running allowance based on mean pay. The above figures do not take into account earnings lost on account of interference in railway traffic. In any case, in my opinion, unless evidence is led on the subject and tested by cross-examination and in the absence of complete data on the subject, it is not proper to accept statements furnished during the course of arguments on the subject. Having regard to the pleadings in the case and importance of the above aspect of the matter, in my opinion, parties should have realised that in order to enable me either to institute a comparison between pay-scales of ASMs and guards C or to determine pay-scales of running staff, materials were required to be placed to disentangle extraneous elements from running allowance to bring forth the pay element thereof in its stark reality. Perhaps this was not done by the Railway Board as it thought that the effort might open up Pandora's box springing up some other ghosts. Similarly, it was not so done by the Federation as, perhaps, it thought that, thereby it might kill the goose which lays the golden eggs.

Whether the existing pay compensates for certain special service features

8.29. Mr. Kulkarni contends that, in any case, some features of duties and responsibilities of running staff have not been reflected in their pay-scales, such as longer hours of duty, performance of travelling duties all throughout their official careers and consequent hardships and their liability to remain away from home comfort for long periods. I have considered the question as to whether the balance

of remuneration, after deduction of travelling allowance and compensatory allowance in lieu of non-provision of running room facilities, does or does not include proper remuneration on account of the above factors. In paragraph 50 of the Report of the RSPAC, under the heading of "Objectives to be aimed at", this aspect of the question is not touched. On the contrary, clauses (3) and (4) of that paragraph lend themselves to the view that the only elements which are to be borne in mind in reckoning running allowance are factors of prevention of dilatoriness and necessity for granting an incentive for good outturn of work. Though Mr. Kulkarni does not place the case in that manner, I have considered the problem as to whether this should mean that the above hardship factors have not been reflected in running allowance. However, in view of what the RSPAC has stated in its Report in clauses (a) and (b) of paragraph 27, already referred to, I am unable to come to the conclusion that the above elements have not been included in running allowance. In my opinion, unless running allowance is properly dissected, it is not possible to reach any definite conclusion on this aspect of the matter. If, on a dissection of running allowance, the above elements are not reflected, then, certainly there will be a good case for revision of pay-scales or increase in rate of running allowance. But, as already stated, this question of dissection of running allowance has not been attempted by any of the two sides, nor any adequate materials placed to enable me to do so, and though the conclusion appears to be unsatisfactory, I feel helpless in the matter in the absence of proper materials on record.

Relativity between pay-scales of ASM and Guard C

8.30. In spite of protestations of Mr. Kulkarni to the contrary that relativity principle is not the main plank for his plea for revision of pay-scales, in my opinion, the pleadings, the evidence and the arguments and the context in which the demand was made do not leave any doubt that that is one of the principal planks for revision of pay-scales of running staff. The pay-scales were determined by the Second Pay Commission in 1959 and became effective from July 1, 1959. That body must have taken into consideration all relevant factors not only for evaluating jobs of various categories of running staff, but also the principle of relativity (a disputed topic which will be examined just in a moment). The pay-scales of ASMs came to be revised from April 1, 1964. It was only after this revision that the present demand came to be made. The present demand is principally based on the revision of that pay-scale. The demand seeks to get the pay-scale of guard C fixed on the basis thereof and the pay-scales of other grades of guards and drivers are sought to be revised on the basis of the revision of the pay-scale of guard C. In the course of his argument also, Mr. Kulkarni deals with this aspect of the matter first. Under the circumstances, in my opinion, it will not be doing injustice to the Federation if this aspect is considered first in preference to the aspect of revision of pay-scales on the basis of an independent evaluation of jobs of various categories of running staff.

8.31. Now, the argument of Mr. Kulkarni is that there has been a parity between the pay-scale of ASM and that of guard C since before 1931. In support

of this, Mr. Kulkarni relies upon the pay-scales of ASM and guard C which were prevalent before 1931, from 1931 to 1947 and from 1-4-1947 to 1-4-1964. In paragraph 8 of its Reply, the Railway Board has given comparative figures of pay-scales prevailing from 1931 to 1-4-1947. Some of these figures were found not to be quite accurate and, therefore, a new statement was prepared on the basis of the schedule of prescribed scales annexed to the Railway Board's letter No. E. 47. CPC/85, dated November 1, 1947, which schedule gives information regarding not only post-1931 but also pre-1931 scales. A study of the figures given in the above statement and the schedule reveals that there was, before 1947, no complete identity amongst various Indian Railways of pay-scales of the above two categories of employees. Out of seven Railways, the figures of which have been compiled, it appears that, in pre-1931 period, none of the scales were identical. On almost all those Railways, the entry scales were different and in most of them the tail scales were different too. As regards post-1931 period, the same picture emerges more or less. After 1947, there are four periods during which pay-scales of one or the other of the above categories of employees underwent changes. The First Pay Commission recommends an identical scale for both the posts with a proviso that, in case of ASM, the initial pay should be Rs. 64/- as against Rs. 60/- for guard C. After the Report of the JAC, the pay-scale of guard C was fixed at Rs. 80-4-120-EB-5-170, so that positions, in regard to initial pay in the scales, became reversed in a violent way. Whereas the entry pay of ASM came to be retained at Rs. 64/- that of guard C was pushed up to Rs. 80/-. Then came a new scale of pay as the result of an agreement between the Railway Board and the Federation, by which the pay-scale of ASM came to be revised and it was put on a par with that of guard C. The Second Pay Commission recommends a new scale of pay for each of the two categories, and pay-scales recommended are identical, i.e. Rs. 130-225. Then came the order of the Railway Board by which it fixed a new pay-scale for ASM, as a result of which the present demand has come to be formulated. From the above materials, I am not convinced that there has been necessarily a relativity between the pay-scales of ASM and guard C at all times. In any case, there are no materials on record to prove that the pay-scales of the two posts came to be fixed after a comparison of duties to be discharged by the incumbents of the two posts. It is true that there has been some similarity in some cases either in the entry or the tail scales prior to 1947. It is also true that the pay-scales of the two posts were more or less identical from 1-4-1956 till 31-3-1964. It is also true that, between 1-1-1947 and 17-11-1950, the pay-scales were almost identical with only a change in the entry scale in favour of ASM and that they were also identical between 18-11-1950 and 31-3-1956 with a violent difference in the entry scale in favour of guard C. As regards the First Pay Commission, there is no indication whatsoever that the pay-scale of guard C is determined on the basis of the pay-scale of ASM on a comparison of duties of the two posts. On the contrary, from the passages which have already been quoted, it appears that the First Pay Commission fixes the pay-scale of guard C as basic pay-scale with

a recommendation that the same may be revised on a review of running allowance. In any case, when the JAC fixed the pay-scale for guard C, no attempt was made whatsoever to bring the pay-scale of ASM in line with that of guard C. It is true that, at the time of the New Deal, the two scales become common, but, here again, there is nothing to show that this is the result of any conscious effort on the part of the parties to equate duties of one post with those of the other. The Second Pay Commission recommends a pay scale which is common for both the categories of employees. Not only this but that body states, in terms, that it has done so, *inter-alia*, taking the principle of relativity into consideration. However, there is nothing on record to show that relativity which the Second Pay Commission has in mind is relativity between the posts of ASM and guard C. It is possible to take the view that the Second Pay Commission takes general relativity inherent in the scheme of scales devised by it into consideration, rather than the specific relativity between the above two posts. In any case, in my opinion, the argument of Mr. Kulkarni suffers from a serious defect, and this emerges from my conclusion that running allowance contains an element of pay, and, according to many authorities, a substantial element of pay. Therefore, whenever the pay-scale of guard C came to be fixed, there is no doubt whatsoever that the authorities fixing the pay-scales took this element of pay into consideration and fixed the pay-scale of guard C. Both the Pay Commissions state this in specific terms. Under the circumstances, if the total emoluments received by guard C were not only those received by him according to the pay-scale fixed for him, but also the pay element in his running allowance, the picture which emerges is that, since the time in regard to which figures have been quoted, total emoluments received by guard C have always been higher than those received by ASM. It is for this reason, perhaps, that, though ASM happened to be in the same scale as that of guard C, he used to opt for recruitment as guard C even after having put in a certain number of years' service in that post, and that, even after the door of recruitment was closed for ASM in 1966, as many as 194 trained optees clamoured for and got posted as guards C and that, none of them, later on, opted for absorption in his parent department. Under the circumstances, in my opinion, the Federation has not been able to make good its claim that, since hoary past, there has always been an identity in the pay-scales of the above two posts.

Similarity or otherwise between the posts of ASM and Guard C

8.32. However, Mr. Kulkarni contends that even if it is not so, he is in a position to establish an identity or a considerable similarity between the two posts on the basis of materials adduced on record. The identity or similarity is said to exist in regard to the following matters: (1) recruitment qualifications, (2) training, (3) channels of promotion, (4) duties and responsibilities, and (5) some other miscellaneous matters.

8.33. (i) Now, there is no doubt that educational qualification for both the posts is identical, except that, in case of ASM, 40 per cent marks in English is a *sine qua non*, whereas in case of guard C, this is not so. As regards training, though the period and subjects taught are not identical, there is no doubt whatsoever that there is a large measure of identity in the subjects taught, although there are a few differences also in this regard. In my opinion, difference in the period of training need not be emphasized too much. Of the long period of training for ASM, about six months are devoted to study of telegraphy, a subject which is not taught to trainee guard. Moreover, a trainee guard is given training in road learning which varies from 21 to 30 days. Both are taught commercial subjects, but a perusal of the syllabi does not leave any doubt that the number of topics which an ASM is taught is far more and the topics are taught in greater depth than those taught to a trainee guard. I agree with the view of Sinha that training which a trainee guard is given in commercial duties is of an elementary nature and that which is given to an ASM is in depth. This is probably due to the fact that, though the two incumbents are to perform commercial duties, such duties are different in kind and importance for the two incumbents. A trainee guard is taught certain subjects which a trainee ASM is not. A trainee guard is given training in carriage and wagon maintenance, specially in vacuum brake system, train lighting, wagon pool and storage and fixing of vacuum gauge, whereas an ASM is not given training in these subjects. On the other hand, an ASM is given training in accounts, telegraphy, calculation of fares and freights, which subjects are not taught to a trainee guard.

(ii) As regards the channel of promotion, the incumbents of both the posts are eligible for promotion to posts of Assistant Yard Masters, Train Controllers, Traffic Inspectors, higher graded ASMs and Station Masters.

(iii) As regards duties and responsibilities, I cannot agree with the submission of Mr. Kulkarni that they are the same or similar. A study of these duties and responsibilities reveals that each performs a different function in the railway system, although, in regard to some functions, there is overlapping, especially at wayside stations. In instituting a comparison between duties of ASM and those of guard C, it is necessary to mention a few facts. Total number of stations on Indian Railways is 7929, of which 1797 are flag or halt stations. A commercial clerk is usually in charge of the latter stations and a Station Master is in charge of others. A Station Master has one or more Assistant Station Masters under him who discharge his duties when he is off duty. Therefore, stations which are manned by Station Masters and one or more of their assistants are of the order of 6132, of which 628 are open only to passenger traffic, 62 only to goods traffic and 306 are not open to either passenger or goods traffic. Therefore, total number of stations on Indian Railways where Station Masters and their assistants have to do both transportation and commercial duties is 5136. Now, each of these stations is always staffed by at least one Station Master. There is always at least one ASM

in each of these stations but the actual number depends upon the volume of traffic therein. Where there is greater volume, there are at least two ASMs. Therefore, the general pattern of Indian Railways is that a station is manned by a Station Master and one or two ASMs. Where there is only one ASM, the SM and the ASM have each to perform duties for twelve hours and they are classified as Essentially Intermittent servants. Where there are two ASMs, the SM and each of the two ASMs have to perform duties for eight hours and they are classified as Continuous. Now, in instituting a comparison between duties of ASM and those of guard C, it is necessary to bear in mind the above composition of station staff and one more fact that a Station Master is on duty invariably during day shift and ASM during night. However, where there is more than one ASM, one of the ASMs will be rendering duty partly during day and partly during night. Booking of goods and parcels is done during day and at those stations where there is only one ASM, those duties will be performed by SM and ASM will not be required to perform them. Mr. Kulkarni contends, therefore, that, in instituting a comparison, duties of the latter kind of ASM must be taken into consideration. I cannot agree. It is true that, according to the published figures, number of ASMs who are classified as Essentially Intermittent servants is about one-sixth of the total number of ASMs. Still, having regard to the fact that guard C is a Continuous servant, and that there is an overwhelming number of ASMs who are also similarly classified, duties performed by ASM at stations where there are more than one ASM cannot be ignored. In view of the above position, I agree with the assessment of duties of the two incumbents of the above posts given by Sinha. According to Sinha, ordinary normal functions of ASM are (1) reception and despatch of trains, (2) acceptance, booking and delivery of goods and parcels, (3) calculation of fares and freights, and (4) selling and collection of tickets at wayside stations; whereas normal duties of guard are (1) taking over a train, (2) checking whether the train is in good fettle, (3) maintenance of vigil in regard to safety of train on run to ensure that it is clear of fouling marks when it stops at a station, (4) to over-see shunting operations, if any, of his own train, (5) to ensure that correct signals have been lowered, (6) to ensure that passengers have boarded the train before it starts, (7) to give assistance to passengers, and (8) in the absence of commercial staff, to perform functions of a commercial nature.

(iv) Amongst the miscellaneous matters Mr. Kulkarni mentions that, on Southern Railway, guards can be called upon to perform duties of ASM in emergency and that ASM can be called upon to work as guard in certain cases.

8.34. From the above facts, I am unable to come to the conclusion that there is either identity or similarity of duties between ASM and guard C. In my opinion, a number of the above factors is not determinative of the question. Neither the fact that educational qualification is common nor that there is a large common area of training nor that channels of promotion are common, is determinative

of the question. There are many posts for which matriculation is the educational qualification. Training may be common because performance of duties may necessitate an acquaintance with the whole or a part of any subject and channels of promotion may be common because, in performance of duties of the two posts, both the incumbents may be regarded as having covered an area which will enable them to perform duties of higher posts. The real and the determinative factor is a comparison of duties performed by the incumbents of the two posts, and, in this particular respect, I am not satisfied that there is an identity or similarity which necessarily impinges on the question of relativity. In my opinion, responsibilities of a post and conditions in which service is rendered are also important factors to be considered when considering the question of relativity. On behalf of the Railway Board, it is contended, on the above evidence of Sinha, that duties of guard are light in normal circumstances and his functions are responsible only when he is called upon to deal with extraordinary circumstances, whereas duties of ASM are always constantly of a fairly onerous nature inasmuch as ASM is directly responsible for functions performed by himself and his subordinates, particularly during his own shift. In this regard, it is alleged that all that a guard has got to do before starting his train is to see that the train is in good fettle and that, whilst the train is in motion, he has to keep a sharp lookout. It is true that a guard gets a duly formed train and that, all that he is called upon to do is a visual checking of the train and that performance of this duty may not entail much physical labour. But, at the same time, there is no doubt whatsoever that this work is of a highly responsible nature. The safety of a train, its crew, its passengers and its goods, to a large extent, depends upon competence of its guard in performance of his above duty. It is true that the primary responsibility of seeing that a train is duly formed is on the staff working in the yard and that, if those in charge of formation of a train perform their duties properly and in accordance with rules, a guard may have very little work to do on the platform. But the responsibility of guard lies in the fact that his is the last and the final check. If guard is negligent in performance of this final check, then, a situation for an indicative accident is at once created. According to Kunzru Committee Report, a majority of accidents is attributable to staff failures. The headings of situations in which staff failures take place, tabulated by Wanchoo Committee, show that a large number of staff failures may be due to improper performance of his functions by guard. In other words, if guard does not properly perform duties allotted to him, quite a large number of accidents attributable to staff failures can take place. The importance of the position of guard in railway system can also be gauged from the fact that, according to rules, a guard is fully and solely in charge of his train, so much so that all others working on the train, including those who receive more pay than him, are enjoined to obey all his lawful orders. Under the circumstances, I am not prepared to accept the case of the Railway Board that guard's functions assume responsibility only in extraordinary circumstances. However, I may not be taken to underscore the role of an Assistant Station Master. He has also impor-

tant and responsible duties to perform, and there is no doubt that these duties are more varied than those of a guard. It is also clear that if he does not attend to his duties properly, serious accidents can also take place. For above reasons, I have come to the conclusion that duties of a guard are not less important than those of an ASM.

8.35. As regards unusual occurrences, the Federation's witnesses have been cross-examined as to the number of occasions on which they were called upon to deal with such situations with a view to bringing out that such occurrences were occasional. Sinha has given evidence on the same topic, specially as regards the number of consequential accidents and indicative accidents which, according to him, have declined in recent years. As regards hot axles, Sinha's evidence is that incidence thereof has been reduced on all kinds of trains, and on both gauges, except in regard to passenger trains on metre gauge where incidence has gone up from 3.9 to 6.5 per million goods wagon kilometres per month. I agree with Mr. Kulkarni that the fact that unusual occurrences have decreased does not in any way detract from responsibilities of running crew. The important point is that they are required to be prepared to deal with such situations and are expected to do so effectively and in accordance with rules as and when they occur. It is probably for this reason that refresher courses are insisted upon after the lapse of a certain period of time. However, at the same time, Mr. Mahadevan is right when he says that decline in percentage of unusual occurrences shows a decrease in the incidence of train crews' responsibility.

8.36. Functions which a guard performs during extraordinary circumstances are of a highly responsible nature. They are perhaps more onerous than those which other railway servants perform. It is not necessary for me to pursue this matter further because both Mr. Mahadevan and Sinha admit this position. However, there is one important matter in which a guard stands upon a distinctly different footing from an ASM, and that is the matter of conditions in which a guard renders his service and hardships which he suffers from. All throughout his career, a guard has to move about on wheels and he has to be away from home for several days in a month. Unlike other Continuous servants, he is liable to perform running duties for ten hours at a stretch, very often twelve and sometimes even fourteen. Evidence establishes that guard C has to travel in a brakevan. A brakevan is a four-wheeler, has rigid springs, no wash basin, toilet, etc. Doors, windows and fittings of the vehicle become damaged during shunting operations, the roof thereof sometimes leaks and seats are not very comfortable. Sinha admits that travel in such a brakevan is not comfortable and though this aspect was examined by the Railway Board officials, only a few changes could be made to improve the conditions. Sinha further admits that the Railway Board has not been able to take any more measures for removing the defects. Mr. Kulkarni also emphasizes personal danger to which running staff are subject in the course of their operations. He says that they hazard risk of life and limb, not only because of their own actions but

also because of actions of other railway staff. He says that any negligence or dereliction of duty on the part of other staff may result in an accident of which the driver, the fireman and the guard are probably the first casualties. There is no doubt that all members of running staff do carry this risk. However, this danger is inherent in performance of duty on any railway system and the danger is more or less shared by railway staff in common with members of public who travel as passengers. Mr. Kulkarni also emphasizes danger to vision of running staff. This argument is based on evidence of Ben Morris who deposes that the incidence of guards being medically incapacitated or de-classified is more than that prevailing in regard to non-running staff, especially because they have to perform often continuous night duty. However, this evidence is not based on any medical opinion or official statistics. It is entirely based upon what the witness claims to have observed in Madurai Division as far back as 1957. I do not think any weight can be given to such casual testimony. Guard's periods of rest are different from others, and his hours of rest are liable to be curtailed. He has to be away from his headquarters continuously and to suffer discomforts away from home for long periods. It is true that a part of this is compensated by awarding him running room facilities. However, guard's hours of work are uncertain, longer and different from those of other Continuous servants. Except in case of guard who works in links, his hours of work are not pre-determined like those of ASM and the principle of first-in-first-out cannot always be stuck to. Total number of hours of work of Continuous ASMs is generally less than that of guards. Mr. Mahadevan admits that overtime work is inherent in railway administration and that this is more pronounced among running staff than among others. It is true that attempts have been made to reduce overtime, but it is quite clear from the circumstances which I have already mentioned that, in case of running staff, it is difficult to achieve any satisfactory reform in this respect. Under the Factories Act, overtime cannot exceed one or two hours per day. Under HER, there is no such limit. There is no doubt whatsoever that duties performed by drivers are also of a highly responsible nature and, except for shunters and firemen who work in sheds, conditions in which other running staff render their service are the same as those in which guards render their service. Therefore, if duties of ASM and guard are compared, the comparison reveals that conditions in which a guard renders his service are more onerous than conditions in which ASM renders his service. Probably, this is one of the reasons why running allowance is paid to running staff and that total emoluments which a guard earns are more than those earned by an ASM. This has always been so since before 1931. Therefore, in my opinion, total emoluments of guard C have never been the same as those of ASM. On the contrary, having regard to the fact that running allowance contains a substantial element of pay, they have always been more than the total emoluments of ASM. However, since a part of emoluments of guard C is included in running allowance and since that pay element cannot be disentangled, it is difficult to say whether the present pay structure of guard C is or is not commensurate with

duties he performs and responsibilities which he carries. In view of the above conclusions and since the pay structure of other running staff is more or less dependent upon the pay structure of guard C, it is also difficult to say whether pay structures of other running staff do or do not do justice to duties and responsibilities they perform and carry.

Merits of the demand

8.37. As regards the demand on merits, there is one more difficulty in the way of the Federation. The pay-scale of guard C and the pay-scales of other members of running staff were fixed by the Second Pay Commission after a careful consideration of all relevant factors including the principle of relativity. Mr. Kulkarni's main attempt is to prove that duties and responsibilities of guard C were of a higher order, that they were performed in very uncongenial conditions and that, consequently, the pay-scales should be revised. I have already discussed that aspect of the problem which relates to uncongenial conditions in which service is being rendered and have concluded that duties are performed in uncongenial conditions. However, these conditions are not new. They were there when the Second Pay Commission made its recommendations. Therefore, unless Mr. Kulkarni is able to show that the above conditions were ignored by the Second Pay commission or that they were not given their due weight or that they have since become changed or that new duties and responsibilities have been thrown on running staff, it is not possible to accede to the demand of the Federation based on merits of the case. There are no materials on record to show that the Second Pay Commission had not paid due regard to the above factors when they fixed the pay-scales of running staff. The presumption is that they had paid due regard to those matters. I shall presently refer to one or two categories of staff in regard to which a specific allegation to that effect is made by Mr. Kulkarni. Subject to a consideration of that submission, therefore, the case of the Federation, based on merits, can succeed only if, since the recommendation of the Second Pay Commission, duties and responsibilities of running staff have increased or conditions of their service and circumstances in which it is rendered have changed. Since the demand was made in 1964, the problem for consideration will be as to whether there have been any such increases or changes before or at about that period of time. However, evidence in the case is not confined to the above period and, as the above discussion shows, evidence has been brought right upto 1968-69. Therefore, I propose to consider the above problem up-to-date. There is no evidence to show that conditions in which service is rendered have changed since the findings of the Second Pay Commission. As regards increases in duties and responsibilities, I have come to the following conclusions : (1) since 1960-61, there has been an appreciable increase in goods traffic; (2) there has been significant increase in number of wagons in terms of four-wheelers, though, as a result of the introduction of BOX types of wagons, train lengths have decreased in some cases; (3) there has been appreciable increase in speed of through goods trains; (4) shunting responsibility at wayside stations, where shunting staff is not provided, is thrown on

guards (5) though there has been an increase in number of passengers, specially during holiday rush, increase in duty is, to a certain extent, counter-balanced by appointments of coach attendants and conductors and by assignment of new duties to travelling ticket examiners; (6) duties of guards have increased by withdrawal of luggage guards on some trains; (7) there has been considerable increase in alarm-chain-pulling; and (8) introduction of the vigilance control system necessitates greater attention on the part of engine driver. As regards the rest of the points, I do not think that increase in duty, if any, in those regards merit any serious consideration. However, all the above increases do not affect all members of running staff uniformly. Quite a majority of them affect guards and only a few of them affect drivers. Amongst guards also, a distinction must be made as to which of them affect guards of goods trains and which of them affect guards of passenger trains. It is necessary to make the latter distinction because the primary member of running staff, on the basis of whose pay-scale the pay-scales of other members of running staff are sought to be revised, is goods guard, specially of through goods trains. Now, of the above increases, the first three only affect guards of goods trains. The increase No. (4) does not affect all goods guards but only guards of sectional and shunting trains. Since through goods stop at main stations only, guards of such trains have not to undertake shunting responsibilities. Except the last, the rest of the increases touch passenger guards and the last touches drivers of diesel engines only. Confining myself initially to the case of goods trains guards, the question for consideration is as to whether the above increases are of such an order that they necessitate a revision of pay-scale of guard C. In considering this problem, one has also to off-set advantages which have accrued to the above guards as a result of modernisation of railway system. There is no doubt whatsoever that introduction of automatic vacuum brake system, provision of field telephone and electric equipment, provision of pyrometer sticks, etc, have, to a certain extent, lessened responsibilities which these guards formerly carried though in common with other guards. It is true that some aspect of modernisation have increased the burden somewhat, but, that is also, to a certain extent, off-set by mental assurance which guards have about safety of track and movement of trains. On the whole, I have come to the conclusion that increases in duties and responsibilities in regard to goods guard are not of such an order as necessarily demand a revision of his pay-scale, at least on a big scale. As regards the increase No. (4), it is true that, at wayside stations, shunting operations have to be attended to by guards whereas formerly these were attended to by ASMs. According to Ben Morris, one pointsman has been reduced at wayside stations and therefore guard C has now to set and re-set points with assistance of only one pointsman and a sweeper-cum-porter who is not qualified to do the above kind of work. But there is no reason to believe that guards themselves have to set and re-set points. Evidence is that planning of shunting operations is the sole responsibility of Station Masters and only shunting operations are supervised by guards with

the aid of the existing staff. I do not think that this operation along with other responsibilities involved in the increase of other duties necessitate a revision of pay of guards of sectional and shunting trains. Increases Nos. (5), (6) and (7) affect passenger guards only. Having regard to some measures which have been adopted by railway administrations to relieve duties of guards in relation to attention to public, I do not think that it can also be said that duties of such guards have increased too. In any case, the increase is not of such an order as to require a revision of their pay-scale. As regards the last increase, it affects diesel engine drivers only. It is true that, on account of provision of vigilance control system, a diesel driver is now required to perform certain acts which he was not formerly required to perform. But, this is necessitated by the fact that internal condition in a diesel engine is of such a character as to induce drowsiness and the control system is designed to prevent development of such drowsiness. I do not think that increased activity is of such an order as to necessitate a revision of pay, specially as the new gadget has the effect of improving efficiency of driver in discharge of his duty. To some extent, this improvement relieves the driver of an anxiety arising out of the fact that he may fall asleep. The introduction of speedometers on diesel engines also has a tendency of assuring driver that his engine does not exceed the maximum permissible speed and does not necessarily increase the quantum of his duty.

Modernisation of railway system and its effect

8.38. According to Sinha, it is the policy of the Board to modernise railway system by providing technological aids which will increase efficiency of railway system and improve safety conditions. Though the main purpose is this, evidence shows that some of the technological aids relieve running staff of a part of their duties. Some of these aids also assure the staff that conditions on track are safe and help them to perform their duties in better ways. However, Mr. Kulkarni maintains that some of the technological aids have increased duties and responsibilities of running staff. It is this aspect which requires to be considered in the present reference. One of the most important devices which has been introduced by way of modernisation is the automatic vacuum brake system. By this system, vacuum is created in a hose pipe fitted on a train and connected with its engine; when brake is applied, air rushes into the hose pipe and thereby sets in motion certain cylinders and gadgets which grip the wheels of bogies and stop the same. This has undoubtedly relieved the work of a guard. Formerly, driver's brake applied only to the engine and guard's brake only to the brakevan. The result was that guard had to apply tremendous force before his train could be brought to a stop. However, the new system entails an examination before departure of a train. Therefore, a duty has been cast upon guard to release vacuum before his train starts, so that he can assure himself that the automatic brake system is in working order. If the system is found defective, it is his duty to get the defects rectified. I am not in agreement with the submission of Mr. Kulkarni that this increases

the magnitude of guard's duty. As a result of the introduction of the new system, application of physical force is eliminated and such force will be required to be resorted to only in extreme cases. Moreover, trains will stop within a lesser interval of time than before under the new system. The pre-departure inspection of vacuum brake system is undertaken only for ensuring that it is in working order. It does not require the guard himself to rectify the system if it is not working properly, nor does it entail an undue amount of work in pre-departure inspection. In any case, any additional work on this score is more than off-set by the fact that the new system eliminates or minimises the use of hand brake which undoubtedly requires resort to physical force and labour. Track circuiting of the main reception lines at all stations on trunk routes is planned, so that, even by mistake, signals are not taken off. According to Sinha, track circuiting of suburban lines is being done at the rate of 200 stations per annum. This cannot add to the number of existing duties. The introduction of multiple aspect upper quadrant and colour light signals is to achieve a higher standard of safety and efficiency. In the multiple aspect system, each signal is pre-warned and the extent of warning is related to emergency braking distance, so that the driver does not come upto the final signal without a pre-warning. The upper quadrant increases visibility and eliminates drooping. The contention of Mr. Kulkarni is that this has increased the burden inasmuch as running staff is required to see more than one signal at every station. I do not think that, having regard to the several advantages which the system ensures to running staff and specially the general duty which they have to perform of being on sharp lookout all throughout the run, the above factor can be regarded as of any importance. As regards multiple aspect colour light signal, Mr. Kulkarni does not deny that it is a distinct advantage but contends, on the basis of Ben Morris' evidence, that presence of yellow colour has a tendency to confuse running staff. I do not think I can attach any importance to this evidence. In the automatic signalling, a train is allowed to pass even though there is red signal, but, in such a contingency, the driver is required to stop first for a minute and then proceed cautiously, as the red light indicates that there is some obstruction ahead. Mr. Kulkarni contends that introduction of this kind of signalling has increased duty of stopping trains, waiting for a minute and, then, proceeding at a cautious speed. I do not think I can attach any importance to this contention also. Even under the conventional system, driver is required to stop when there is a red signal. I do not think that the complaint on the score that the train is required to be taken at a cautious speed, is justified, because, before the introduction of the new system, driver was also required to go cautiously whenever the signal showed that the line was not clear. An additional warning signal is introduced only on those lines where trains are allowed to proceed at very fast speeds. I fail to see how such a system has increased the burden on driver or other running staff. Driver's vigilance control system is introduced only on diesel engines, mainly with a view to testing whether the driver is or is not alert. If the driver is not alert, or he does not respond to buzzers, the engine stops

automatically. It is true that, in such a system, in order that engine may not come to a stop, driver has got to apply pressure on certain gadgets so that his awareness may be known. But the additional activity is required to be displayed more for ensuring alertness on part of the driver and for helping him to keep himself awake, both of which conditions the driver is required to fulfil under the old system too. Speedometers are introduced also on diesel engines to aid driver to show the speed at which his engine runs, and speed recorders are introduced with a view to recording and discovering at a later date whether the maximum permissible speed was exceeded or not. None of these aids can reasonably be regarded as increasing the burden on driver or any other running staff. Nothing need be mentioned regarding provision of minor gadgets as it is not urged by Mr. Kulkarni that any of them has increased duty and responsibility of running staff. Formerly, hot axles had to be felt by hand and, to gauge the extent of the trouble, the same had to be opened. Instead, now pyrometer sticks have been devised which indicate the extent of heat inside the axle and, thereby, discover whether breakage of journal has or has not taken place or waste matter does or does not require to be removed. Far from increasing the burden of running staff, this gadget decreases it.

8.39. After giving my best thought to all that Mr. Kulkarni has to urge on the aspect of increase in duties and responsibilities arising because of increase in traffic, speed, movement and modernisation, I have come to the conclusion that no case has been made out by the Federation on these counts for increasing pay-scales of running staff.

Pay-scales of particular categories of running staff

8.40. Apart from the above general contentions, some specific contentions were raised by Mr. Kulkarni in regard to pay-scales of some categories of running staff which may now be considered on their merits.

8.41. As regards guard C, Mr. Kulkarni contends that a travelling ticket examiner and a guard C both are in the same scale of Rs. 130-225 in spite of the fact that guard C's responsibilities are higher and his conditions of service and hours of duty are more onerous. However, in instituting this comparison, Mr. Kulkarni ignores the fact that guard C earns running allowance whereas TTE gets only travelling allowance. Therefore, from the point of view of total pay-package, the two do not stand on the same footing. Then Mr. Kulkarni contends that, on Southern Railway at least, guard can be called upon to perform duties of ASM in case of emergency and that ASM can officiate as guard C provided he has qualified himself to perform duties of guard. I am unable to appreciate also how this fact can be regarded as a good ground for increasing pay-scale of guard C. It is obvious that, as and when the concerned servant will be posted to perform the functions of one or the other post, he will be given the pay-scale of the concerned post.

8.42. Then Mr. Kulkarni contends that, in any case, the pay-scale of guard B is very meagre as compared to that of guard C. Guard C's pay-scale is Rs. 130—225 and that of guard B is Rs. 150—240. Mr. Kulkarni contends that, by the time a person becomes eligible for promotion to guard B, usually, he has put in service of more than 15 to 20 years and that, in a majority of cases, what guard B gets is a mere pittance of Rs. 15/- at the top of the pay-scale, the rate of increment in which becomes exhausted in three years' time. However, in making this submission, Mr. Kulkarni ignores the fact that guard B gets higher running allowance at the rate of ten paise per 100 kilometres from the day of his promotion as guard B and that his total pay-pocket increases approximately by Rs. 10/- per month, from the date of his promotion. Mr. Kulkarni next contends that, whereas, for trains clerk, who is in the grade of Rs. 110—180, the next promotion is in the grade of Rs. 150—240, the next promotion for guard C is the same as that of trains clerk. However, I have no materials to ascertain as to why trains clerk's next promotion post is fixed in the same scale as that of guard C. Therefore, it is not possible to express any definite opinion on that subject. The same remarks apply to the analogy of commercial clerks in the grade of Rs. 110—200, whose next promotion post is in the scale of Rs. 150—240.

8.43. As regards guard A, Mr. Kulkarni contends that, whereas he is in the scale of Rs. 205—280, conductors are in two scales of Rs. 205—280 and Rs. 250—380. Mr. Kulkarni contends that duties performed by guard A are more numerous and arduous than those performed by conductors. He contends that conductors only look after convenience of first class passengers and their reservations, for the latter of which separate arrangements exist at stations, whereas duties of guard A are more numerous, more arduous and involve greater responsibilities. He further says that conductors are required to obey lawful orders of guards. He further contends that, despite the above differences in duties, both are put on the same scale initially. In urging the above contention, Mr. Kulkarni forgets that guard A gets running allowance whereas conductor gets only travelling allowance.

8.44. The next complaint of Mr. Kulkarni is that, having regard to the fact that guard C represents 69 per cent of total number of guards, guard B 25 per cent and guard A 6 per cent on Indian Railways, guard C normally has to put in more than 20 years' service before he can aspire to become guard B and that the latter has to put in about 10 to 15 years' service before he can aspire to become guard A and that, in a large number of cases, guard B has to retire without being promoted as guard A. Having regard to promotions prospects of different grades of guards, the grievance appears to be justified. Though no figures are on record, it is contended that the same imbalance exists in case of drivers also. It appears that difference in percentages of posts in higher grades is due to the fact that upgrading in cadres of guards and drivers is not based on number of staff but on classification of trains. The imbalance of promotions is due to this fact. The suggestion on behalf of the

Federation is that this classification should not be held to be sacrosanct and must be revised. Therefore, the Federation demands that all inter-divisional and long distance passenger trains should be classified as Grade A. Mr. Kulkarni cites the instance of all express trains having been upgraded from Grade B to Grade A with effect from 1-8-1963, except those main line fast expresses on Eastern and Northern Railways which were already in higher grade. Mr. Kulkarni cites the following reasons in support of the proposal : such trains (1) cover longer distances ranging from 250 to 500 kilometres, (2) carry mail van, (3) have greater lengths than other passenger trains, (4) have greater speed, (5) have sectional coaches, (6) carry greater loads, and (7) provide better passenger amenities as against ordinary passenger trains. According to Krishan, such long distance passenger trains have some common features with mail and express trains. These common features are : (1) punctuality, (2) reservation for higher class passengers, (3) provision for sleeper coaches, and (4) carriage of perishable articles, through packages and cash safes. According to him, in some respects, a guard of such trains has to carry greater burdens than a guard of mail and express trains, such as, (1) he has to perform duties which conductors perform in mail and express trains, and (2) there is more over-crowding in such trains and greater responsibility, as there is less scope for reservation. Mr. Kulkarni further points out that branch line trains are classified as grade B, though they have lesser speeds and carry lesser loads. Sinha opines that there is no change in nature of duties of train crew operating on long distance and inter-divisional trains, except that number of packages which a guard has to deal with under the latter type of trains is more than in the former type. Mr. Mahadevan contends that, since these trains have been upgraded to Grade B only recently, it is not fair that, within a short period, they should be upgraded still further. In my opinion there is a strong case in support of the claim made by the Federation. I am in favour of this proposal also because it will remedy the present imbalance of promotions to higher posts. Under the circumstances, I decide that all inter-divisional and long distance passenger trains should be upgraded to Grade A, provided their total run is not less than 250 kilometres.

8.45. As regards brakesman, Mr. Kulkarni contends that, in any case, his pay-scale is not commensurate with duties performed by him. Mr. Kulkarni compares his pay-scale with the pay-scales of the staff of Transport and Commercial Branches from whom brakesman is appointed. A senior pointsman, who is promoted on the basis of seniority, is in the scale of Rs. 80—110 and a parcel weigher, marker or sorter, who is promoted to the post of brakesman by selection, is also in the scale of Rs. 80—110. Mr. Kulkarni contends, therefore, that, for these employees, though promoted to a higher scale, difference in pay is not much. Mr. Kulkarni further contends that, brakesman does not merely do the work of applying brakes but also assists guards in performance of their manifold duties. According to the Second Pay Commission, brakesman assists guard in looking

after parcels, luggage, etc. in the brakevan and their loading and unloading. Mr. Kulkarni further contends that brakesman is required to study GSR, whereas signaller is not required to do so and that brakesman takes ten years to reach the maximum of Rs. 130/-. In my opinion, Mr. Kulkarni ignores the fact that brakesman earns running allowance, that he has further chances of promotion to the post of guard C and that he is essentially drawn from ranks whose posts are in class IV.

8.46. As regards the first fireman, Mr. Kulkarni's main grievance is that, though the two fireman, A and B, render identical services, they are put in two different scales of pay-B has the scale of Rs. 100—130 and A has the scale of Rs. 125—155. Therefore, Mr. Kulkarni submits that difference in the two pay-scales must be eliminated and fireman B should be granted the same scale as fireman A. Mr. Kulkarni further says that such a difference does not exist in other departments, for example, a chargeman, by direct recruitment and a chargeman by promotion, get the same scale, Mr. Kulkarni raises the same contention in regard to the different pay-scales of shunters A and B that, though both of them have identical duties, their pay-scales are different. This submission was considered and rejected by the Second Pay Commission. In my opinion, Mr. Mahadevan is right in contending that difference in pay-scales is not based on any differences in duties but on such

other considerations as source of recruitment, educational qualifications and availability of chances of further promotion to employees. Moreover, it is noteworthy that the demand for revision of pay-scales of the above categories of servants, as formulated by the Federation, repeats differences in the pay-scales of the above two kinds of categories. Therefore, the claim made by the Federation for an identical scale of pay for firemen A and B is not justified.

Summary of Decisions

8.47. For the sake of convenience, I summarise my decisions as follows :—

(1) All inter-divisional and long distance passenger trains should be upgraded to Grade A, provided the total run is not less than 250 kilometers.
(*vide* para 8.44).

(2) Subject to above, the claim made by the Federation for revising pay-scales of various categories of running staff is rejected.
(*vide* para 8.39).

New Delhi,
Dated : July 6, 1972

N. M. MIABHOY
Chairman,
Railway Labour Tribunal,
1969.

APPENDIX A

(For insertion in Part I Section I of the Gazette of India)

Government of India
Ministry of Railways,
(Railway Board)

No. ERBI 69C01/8.

New Delhi, dated 28th January, 1969
8 Magha, 1890

RESOLUTION

The Permanent Negotiating Machinery set up by Government in December, 1951 for dealing with disputes between railway labour and railway administrations provides that if, after discussions between the Railway Board and the Railway Labour Federation, agreement is not reached between the two sides on any matters of importance, such matters may be referred to an *ad hoc* Railway Tribunal consisting of an equal number of representatives of Railway Labour and the Railway Board with a neutral Chairman.

2. The National Federation of Indian Railwaymen has urged that certain matters, in which agreement between it and the Railway Board was not achieved after discussion, were of sufficient importance to warrant reference to a tribunal. Government have accepted this contention and have decided to appoint an *ad hoc* tribunal. It has further been agreed between the National Federation of Indian Railwaymen and the Railway Board that this tribunal should consist only of one neutral person, representatives of the Federation and the Railway Board being permitted to present their cases before him.

3. Accordingly, the Government of India have decided to appoint Shri N.M. Mjadhoy, Retired Chief Justice of the Gujarat High Court, as the one-man Tribunal with effect from the date he assumes charge. The tribunal will be known as the "Railway Labour Tribunal 1969".

4. It has been decided, in consultation with the National Federation of Indian Railwaymen, that the following demands made by the Federation will be referred to the Tribunal :—

- (i) Night Duty Allowance should be calculated at $1\frac{1}{2}$ times the normal rate of pay to all employees performing duty at night, irrespective of their classification under the Hours of Employment Regulations.
- (ii) In respect of work-shop staff :
 - (a) all vacancies, which occurred since the introduction of the incentive scheme should be filled up;
 - (b) proper proportion of skilled, semi-skilled and unskilled staff should be maintained and other measures taken to ensure adequate scope for promotion to the semi-skilled and unskilled staff.
 - (c) the posts of supervisory staff in the mechanical workshops should be redistributed amongst the various grades in conformity with their responsibilities and an adequate channel of promotion should be provided for them.
- (iii) Casual labour on the Railways should be paid wages at the rate of 1/30th of the minimum of the time-scale plus appropriate Dearness Allowance applicable to the corresponding categories of staff in regular employment in the Railways.
- (iv) The disparity between the hours of work and annual gazetted holidays at present prescribed for clerks at railway stations, sheds and depots on the one hand and those prescribed for clerks in administrative offices on the other should be removed by granting the former the privileges available to the latter. If this is not possible, the former should be monetarily compensated for the extra hours and days of work done by them.
- (v) The present Hours of Employment Regulations, which govern hours of work, periodic rest and overtime in respect of railway staff, other than those employed in workshops, falling under the definition of 'Factories' in the Factories' Act, should be completely reviewed.

- (vi) All gangmen in the Civil Engineering Department of the Railways should be granted an Arduous Duty Allowance of Rs. 3/- per month.
- (vii) The scale of pay of gangmates in the Civil Engineering Department of the Railways should be raised to the skilled grade. Along with this, the scale of pay of keymen and head trollymen of the Civil Engineering Department should also be suitably enhanced.
- (viii) The scales of pay of all running staff should be enhanced.
5. The Tribunal will endeavour to complete its work as early as possible.

Ordered that the Resolution be published in the Gazette of India for general information.

Sd/-

C. S. Parameswaran,
Secretary, Railway Board.

The General Manager,
Government of India Press, New Delhi.

Sd/-

C. S. Parameswaran,
Secretary, Railway Board.

Copy to :—

1. Shri N.M. Miabhoy, Retired Chief Justice of Gujarat,
C/o. Shri S.T. Topiwala, 6/38, Harrington Avenue,
(Camp :), Madras-31.
2. The General Managers, All Indian Railways DLW, CLW and I.C.F.
3. The General Secretary, N.F.I.R., 166/1, Panchkuian Road, New Delhi.

APPENDIX B
GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(Railway Board)

No. E51FE1-22

New Delhi dated the 24th December, 1951

To

The General Managers and C.A.O. Rs.,
Indian Railways.

Subject :—Setting up of a Permanent Negotiating Machinery for dealing with disputes between Railway Labour and Railway Administrations.

As you are aware, the Railway Board have had under consideration the question of setting up a Permanent Negotiating Machinery for dealing with disputes between Railway labour and Railway Administrations. After discussions with labour, it has now been decided that a Permanent Machinery as described below should be set up for maintaining contact with labour and resolving disputes and differences which may arise between them and the Administration. These arrangements will come into force with effect from 1st January, 1952. Your attention is, in this connection, invited to the Press Communiques issued by the Railway Board on the 10th November, 1951, and the 1st December, 1951 from which you will observe that both the All India Railwaymen's Federation and the Indian National Railway Workers' Federation have agreed to the setting up of the machinery as proposed by the Board.

2. The machinery is envisaged in 3 tiers; one at the Railway level, the recognised unions having access to district/divisional officers and subsequently to officers at the headquarters including the General Manager; at the next tier, matters not settled at Railway level will be taken up by the respective Federations with the Railway Board; and at the third tier, in cases in which agreement is not reached between the Federation and the Railway Board and the matters are of sufficient importance, reference will be made to an *ad hoc* Railway Tribunal composed of representatives of the Railway Administration and labour presided over by a neutral Chairman.

3. The following detailed procedure is laid down for the working of the machinery referred to above :—

- (i) At the district or divisional level, the District or Divisional officers should meet the branches of the recognised unions which may be established in the districts or divisions, at least once in two months and oftener if necessary. Each workshop will be considered as a district. The particular branches which should meet the District or Divisional Officers as prescribed above should be agreed upon between the General Manager and the Union. The detailed procedure of arranging these meetings should be agreed upon with the Union, but this should include a provision that the branch should supply in sufficient time before the meeting the subjects which it proposes to raise at the meeting with memoranda setting out its point or view. This would enable the District or Divisional Officer to examine the questions and be prepared to take part in a useful discussion.
- (ii) At the Railway Headquarters, the General Manager or the Assistant Deputy General Manager in charge of staff will meet the unions at least once a quarter and oftener if necessary.
- (iii) All disciplinary matters and subjects like promotion, transfer, etc., of individual members of the staff which do not involve any general principle will be excluded from the scope of the discussions at all these levels, except at the discretion of the officer concerned. Where, however, Unions have been given certain privileges in these matters, these will not ordinarily be curtailed. If, in an inter-grated unit, there is disparity between the existing privileges in this matter and agreement cannot be reached with the Union on a uniform application of some procedure, the matter should be referred to the Railway Board for further instructions. Pending the receipt of these instructions, the general rules set out above should be followed.

- (iv) At the district and railway levels, subjects will comprise these which are within the powers of the officers concerned.
- (v) Questions concerning pay-scales, allowances, etc., will only be discussed between the Federations and the Railway Board and not at lower levels.
- (vi) At the Centre, negotiations will be between the Railway Board and the two Federations and for this purpose, there will be quarterly meetings between the Railway Board and the Federations.
- (vii) When a matter which is raised for discussion at the district level is not settled by agreement it may be raised at the Railway level, for further negotiation. Similarly, a matter not settled at the Railway may be brought up by the Federations to the Railway Board for discussion.
- (viii) All subjects brought up for discussion at the various levels should be disposed of as expeditiously as possible.
- (ix) If after discussions between the Railway Board and the Federations, agreement is not reached between the two sides on any matters of importance, such matters may be referred to an *ad hoc* Railway Tribunal which will be set up for dealing with them at the Centre. This Tribunal will consist of an equal number of representatives of Railway labour and the Railway Administration with a neutral Chairman. The Tribunal will be enabled to make such investigations as they deem necessary before they give their decision. The detailed procedure which the Tribunal should adopt for conducting its proceeding and submitting its decisions has not yet been drawn up; this will appropriately be dealt with when the Tribunal is set up for the first time.
- (x) It would be open to Government to accept, reject or modify the decision of the Tribunal and where the matters in dispute affect the workers under Ministries other than the Railway Ministry, these Ministries will be consulted as to :—
 - (a) whether they have any objection to the disputes being referred to the Railway Tribunal; or
 - (b) whether they would like the dispute to be referred to an *ad hoc* Commission on which they will also be represented.
- (xi) On matters which have been settled by agreement or in which Government ultimately accept the decision of the Tribunal, it will not be open to the Federation to raise the same issues again for a period of two years. In those cases in which Government have rejected or modified the decision of the Tribunal, the issue may be raised at the end of one year.

4. The Board will be glad if you will take the necessary steps to establish this machinery to enable it to start functioning from 1-1-1952. They may also be advised when the machinery starts to function and be supplied with copies of any detailed instructions which you may issue.

5. Certain amendments to the disciplinary rules have also been agreed upon. A separate communication will be sent to you in regard to these.

DA/Nil.

Sd/-

R. Srinivasan,

Deputy Director Establishment
Railway Board.

No. E51FE1-22.

New Delhi dated the 24th December 1951

Copy forwarded to :—

- (i) The General Secretary, A.I.R.F./I.N.R.W.F. with 22 spare copies.
- (ii) The Secretaries, Home, Defence, Labour, W.H.S. Communications, Commerce & Industry and Transport Ministries;
for information.

Sd/-

R. Srinivasan,

Deputy Director Establishment
Railway Board.

APPENDIX C

BEFORE THE RAILWAY LABOUR TRIBUNAL 1969
NATIONAL FEDERATION OF INDIAN RAILWAYMEN

versus

RAILWAY BOARD

LIST OF NON-PARTIES

1. All India Railwaymen's Federation, New Delhi.
2. Western Railway Employees' Union, Bombay.
3. S.E. Railwaymen's Union, Kharagpur.
4. Purvottar Railway Mazdoor Sabha, Garhara.
5. Dakshin Railway Employees' Union, Tiruchy.
6. All India Guards' Council, Ghaziabad.
7. All India Loco Running Staff Association, Western Zone, Abu Road.
8. All India Railway Brakes-Men Association, Kanpur.
9. Eastern Railway Loco Running Staff Association, Sealdah.
10. T. R. S. Running Staff Council, Eastern Railway, Sealdah.
11. Shri G.D. Banerjee, Brakesman, Eastern Railway, Sealdah Division, Sealdah.
12. Southern Railway Stores Staff Action Council, Madras.
13. Shri Harivadan S. Joshi, Senior Clerk, Loco Shed, Western Railway, Hapa.
14. Shri S. Rajagopalan, Senior Clerk, DCOS Office, Southern Railway, Golden Rock, Tiruchirapalli.
15. Shri P.N. Ramchandra, Clerk, Central Workshop, Southern Railway, Golden Rock, Tiruchy.
16. Southern Railway Firemen Council, Tiruchirapalli.
17. All India Loco Running Staff Association, Delhi.
18. Southern Railway Ticket Checking Staff Union, Salem, (Tamilnadu).
19. Shri S.B. Majumdar, Special Grade T.T.E. Eastern Railway, Calcutta.
20. Indian Railways Technical Supervisors Association, Lucknow.
21. National Railway Mazdoor Union, Bhopal Branch, Eastern Railway Colony, Bhopal.
22. South Central Railway Firemen Council, Bitragunta.
23. Southern Railway Firemen Council, Madurai.
24. Indian Railway Signal & Telecommunication Staff Association, Delhi.
25. Eastern Railway Men's Union, Calcutta.
26. National Railway Mazdoor Union, Bombay.
27. N.E. Railway Mazdoor Union, Gorakhpur.
28. All India Railway Commercial Clerk's Association, (South Zone CEC), Quilon, Edava.
29. Eastern Railway Co-ordination Committee, Howrah.

O R D E R

This Tribunal was set up by the Central Government by its resolution No. ERB/169CO1/8, dated January 28, 1969, under the name "Railway Labour Tribunal 1969" and the notification in respect thereof was published in the Central Government Gazette Part I Section 1 on February 8, 1969. The resolution stated that the Railway Board and the National Federation of Indian Railwaymen (hereinafter called NFIR) would

be permitted to present their cases before the Tribunal. The Tribunal has been set up to decide certain items of dispute which were pending solution between the Railway Board and the NFIR for last several years. After the Tribunal was set up, dates were fixed for the submission of Statement of Demands by NFIR and the Written Statement of the Railway Board and a rejoinder thereto by NFIR. The Statement of Demands was submitted by the NFIR on 3rd May, 1969 and the Written Statement was filed by the Railway Board on 18th June, 1969 followed by a rejoinder from the NFIR on 3rd July, 1969. During the above period and even after the submission of the Statement of Demands, the Written Statement and the rejoinder, a number of representations were received from numerous non-parties—All India Railwaymen's Federation, several regional unions and individuals. The prayers which were made in these representations may broadly be classified into three categories. Some of these representationists prayed that they should be joined as parties before the Tribunal. Some others prayed that they should be allowed to make representations in regard to the items of reference. Some others prayed that they should be allowed to lead evidence in regard to those items. These prayers were discussed by me with the representatives of the NFIR and the Railway Board at the second session held at Ahmedabad on 21st and 22nd August, 1969. Both these representatives strongly objected to the grant of any of the above prayers. Therefore, on that day, I decided to issue notices to the NFIR and the Railway Board to show cause as to why all or any of the above prayers should not be granted. Intimation in regard to these show cause notices was also issued to the non-parties who had made the above prayers. The notices were made returnable at a Session to be held on 25th September, 1969. Unfortunately, on account of the disturbed conditions in Ahmedabad, it was not possible to hold the above session on the date fixed. Therefore that session was decided, in consultation with the parties and non-parties, to be held on 27th November, 1969. During the intervening period also, some more representations were received and intimation was also given to such representationists to remain present at the above session. In that way, at the third session, 29 representationists were invited to take part in the session besides the NFIR and the Railway Board. Out of these, 23 non-parties appeared either through counsel or their officers or individually. The others chose to remain absent. The session continued till 1st December, 1969. During the currency of the Session, oral arguments were advanced by the parties and most of the non-parties present and written arguments were submitted by others.

2. The only submission of the learned counsel of the NFIR and the primary submission of the learned counsel for the Railway Board was that this Tribunal, having been appointed under a Scheme known as the Permanent Negotiating Machinery, was a domestic tribunal and that therefore, none of the non-parties had a right to be joined as a party or to be heard or to lead evidence. The alternative submission of the learned counsel for the Railway Board was that, if not a domestic tribunal, the Tribunal was either analogous to a Commission of Inquiry or an administrative tribunal, in which alternative cases also, none of the above three prayers of the non-parties could be granted. The learned counsel for both the NFIR and the Railway Board contended that, in any case, this was neither a Tribunal nor a National Tribunal under the Industrial Disputes Act, 1947 (hereinafter called the Act). The submissions which were made on behalf of the non-parties were, as is natural, not uniform. Their submissions clashed but nonetheless all of them contended that, whichever of their submissions was accepted, on one or another principle to be presently mentioned, they were entitled to be joined as parties or, in any case, to be heard and to lead evidence. Some of the non-parties expressly conceded that the present Tribunal was appointed under the Permanent Negotiating Machinery. Some others contended that this was not so. The latter contended that the Tribunal was either a Tribunal appointed under section 10(1) of the Act or a National Tribunal appointed under section 10(1-A) of the Act. Some of the representationists challenged the admissibility of the Permanent Negotiating Machinery Scheme and some others challenged its constitutional or legal existence. All the non-parties vehemently contended that they were vitally interested in either all or any one or the other items of reference and that the decisions which were to be reached by this Tribunal would affect their interests. Some of the representationists contended that the disputes referred to this Tribunal were essentially disputes between the Railway Board on the one hand and the Railway labour on the other, that they were not affiliated to the NFIR and that, therefore, that body had no right to represent that section of the Railway Labour. Some others contended that they were affiliated to the AIRF and that even if the individual unions were not joined as parties, in any case, the AIRF should be joined as party so that their grievances could be fully ventilated before the Tribunal. Some of the non-parties contended that they had no faith in either of the two Federations, NFIR or AIRF, and insisted that they alone had a right to appear before the Tribunal and that, unless this was done, their interest would be prejudiced. The stand adopted by the AIRF was based upon the Permanent Negotiating Machinery. Its contention was that it was a party to that Machinery, that it had raised the same or similar disputes before the Railway Board under the Scheme and that therefore, it had the same right to be heard on the items of dispute as the NFIR and that, unless they were represented, complete justice would not be done to the points of reference.

3. Incidentally, I may mention that it was conceded by both the parties and non-parties that if the appointment of this Tribunal was under the Act, then, all the non-parties had a right to appear before the Tribunal and to take part in its proceedings.

4. From the above resume' of the submissions made by the parties and non-parties, it is clear that, in order to dispose of their contentions, it is necessary, first, to read and analyse the Scheme of Permanent Negotiating Machinery. This Scheme was formulated in 1951 as a result of parleys which were held between the Railway Board and a federation then known as All India Railwaymen's Federation. These parleys were held between the representatives of the Railway Ministry and the representatives of that AIRF. There was another

federation of railway unions which was in existence then under the name of Indian National Railway Workers Federation. Both the above federations concurred in the decision of the Railway Board to set up the Permanent Negotiating Machinery. It appears that, sometime in 1952, the above two Federations merged together under the name of NFIR and, at about that time, a Tribunal presided over by Shri Sankar Saran, retired Judge of the Allahabad High Court, was set up to decide certain items of disputes which were pending between the Railway Board and the united Federation. However, at a later stage, the united Federation broke up and a section thereof seceded therefrom and formed a federation under the old name of All India Railwaymen's Federation. The truncated NFIR continued to work under the name NFIR. However, neither the parties before this Tribunal nor any of the non-parties contended that the seceding AIRF and the truncated NFIR are not the Federations which had agreed to the setting up of the Permanent Negotiating Machinery. In fact, the consensus of opinion was that both these Federations have been working the Machinery since its inception. Unfortunately, there is no formal document which embodies the Permanent Negotiating Machinery. Its record is to be found in a letter No. E51FE1-22, dated 24th December, 1951, addressed by the Deputy Director, Establishment, Railway Board, to the General Managers and Chief Administrative officers of Indian Railways. The letter consists of only three paragraphs. The first paragraph mentions that the Railway Board had had under consideration the question of setting up a Permanent Negotiating Machinery for dealing with disputes between the railway labour and the railway administration, that, after discussion with the railway labour, the Railway Board had decided that a permanent negotiating machinery, as described in the letter, should be set up "for maintaining contact with labour and resolving disputes and differences which may arise between them and the administration". That paragraph then refers to two press communiques issued by the Railway Board on 10th November, 1951 and 1st December, 1951 and says that the General Managers and C.A. Os. would observe therefrom that both the AIRF and INRWF had agreed to "the setting up of the machinery as proposed by the Board". The first paragraph further says that the machinery will come into force from 1st January, 1952. The second paragraph summarizes the machinery which is mentioned in detail in the third paragraph. It says that the machinery is set up in three tiers; one at the railway level, recognized unions having access to District Divisional Officers and, subsequently, to the Officers at the Headquarters including the General Manager; that, at the second tier, matters not settled at the railway level will be taken up by the respective Federations with the Railway Board and that, at the third tier, "in cases in which agreement is not reached between the Federation and the Railway Board and the matters are of sufficient importance, reference will be made to an *ad hoc* Railway Tribunal composed of representatives of the railway administration and labour presided over by a neutral Chairman". The third paragraph lays down the detailed procedure for the working of the machinery in several clauses. The first clause thereof enjoins on the District or Divisional Officers to meet "the branches of the recognized unions which may be established in the districts or divisions, at least once in two months and oftener if necessary". It further says that the particular branches which should meet the District or Divisional Officers should be agreed upon between the General Manager and the union. The second clause enjoins on the General Manager or the Assistant Deputy General Manager in charge of staff to meet the unions at least once a quarter or oftener if necessary. The third clause mentions certain topics which are excluded from the scope of the discussions at the above two levels except at the discretion of the Officer concerned but preserves intact the privileges which the unions may have enjoyed in regard to those matters. The fourth clause says that the subjects which will be discussed at the railway level will comprise only those which are within the powers of the officers with whom they are discussed. The sixth clause states in specific terms that at the centre "the negotiations will be between the Railway Board and the two Federations and for this purpose, there will be quarterly meetings between the Railway Board and the Federations". The fifth clause mentions certain topics which can only be discussed between the Federations and the Railway Board "and not at lower levels". The seventh clause states that when a matter raised for discussion at the district level is not settled by agreement, it may be raised at the railway level for further negotiations and similarly a matter not settled at the railway level may be brought up by the Federations to the Railway Board for discussion.

5. Pausing here for a moment, it is quite clear from the provisions summarized above that this Machinery is set up to establish contacts between railway labour and the railway administrations at the district or divisional level or at the headquarters level. For the purpose of establishing such contacts, bimonthly meetings at the district or divisional level and quarterly meetings at the headquarters level are enjoined. If disputes arise at any of these levels and happen to be within the competence of the Officers concerned, then, attempts are to be made to resolve those disputes which are within their competence. It is equally clear that though the Machinery is established for dealing with disputes between railway labour and the railway administrations, the meetings are to be held between certain designated officers and "the branches of recognized unions which may be established in the districts or divisions" and that these branches "should be agreed upon between the General Manager and the Unions". It is quite clear that the Machinery does not envisage contact and resolution of disputes between all unions and the officers concerned but it envisages contacts and resolution of disputes only between particular branches of recognized unions and those officers. Therefore, it is quite clear that at the district or divisional or headquarters level, the negotiations are to be only between particular branches of recognized unions and the designated officers. This constitutes the first tier of the Negotiating Machinery. The topics which can be included for discussion at this level are all those which are within the competence of the officers concerned and the topics which are to be included have been clearly mentioned. It is also equally clear that facility has been granted to the unions to raise at the headquarters level those topics in regard to which agreement is not reached at the district or divisional level. The Machinery further envisages negotiations at the centre but it is

equally clear that these negotiations are to be "between the Railway Board and the two Federations". This constitutes the second tier of the Machinery. It will be noticed that besides the matters specifically mentioned which can be dealt with at the second tier, the Machinery permits the matters negotiated at the lower two levels and not settled also to be raised at the second tier but it says, in specific terms, that such matters "may be brought up by the Federations to the Railway Board for discussion". Therefore, the Machinery clearly mentions the parties with whom contacts are to be established and negotiations carried at the first two tiers. At the first tier, the district or divisional officers or the General Manager or the Assistant Deputy General Manager are to represent the railway administration and the branches of recognized unions or the unions are to represent the railway labour. At the second tier, the railway administrations is to be represented by the Railway Board and the two Federations are to represent the railway labour. From the above resume, it is quite clear that neither the branches of recognized unions nor the unions have any place for negotiations at the second tier. If any dispute remains unsettled at the first tier, then, the dispute is to be negotiated at the second tier only between the Railway Board and the two Federations.

6. Then comes the crucial clause (ix) of paragraph 3 of the above letter dated 24th December, 1951. That clause states that if, after discussions between the Railway Board and the Federations, agreement is not reached between the two sides on any matter of importance, such matter may be referred to an *ad hoc* Railway Tribunal. This Tribunal will consist of an equal number of representatives of the railway labour and the railway administration with a neutral Chairman. The clause further adds that the Tribunal will be enabled to make such investigations as they may deem necessary before they give their decision. The clause further states that the detailed procedure which the Tribunal should adopt for conducting its proceedings and submitting its decisions has not then been drawn up and will appropriately be dealt with when the Tribunal is set up for the first time.

7. Pausing here again, it is quite clear that the third tier is to consist of an *ad hoc* Railway Tribunal and that this Tribunal is to decide the matters in regard to which agreement has not been reached between the Railway Board and the Federations at the second tier.

8. The tenth clause says that it will be open to the Government to accept, reject or modify the decision of the Tribunal. It further says that if the matters in dispute affect the workers in Ministries other than Railway Ministry, then, those other Ministries will be consulted as to (1) whether they have any objection to the disputes being referred to the Railway Tribunal or (2) whether they would like the dispute to be referred to an *ad hoc* Commission at which they will also be represented.

9. The eleventh clause says that on matters which have been settled by agreement or in which the Government ultimately accepts the decision of the Tribunal, it will not be open to the Federation to raise the same issues again for a period of two years, but, in those cases in which the Government have rejected or modified the decision of the Tribunal, the issue may be raised at the end of one year.

10. From the above provisions relating to the third tier, it will be noticed that though the Machinery provides for the appointment of an *ad hoc* Tribunal in regard to matters of importance which are not settled at the second tier, the appointment of such a Tribunal is neither compulsory nor automatic. Though the Machinery states specifically as to how a Railway Tribunal is to be composed, it does not state in specific terms as to who is to compose the same. It is common ground that, on the first occasion, the Tribunal was appointed by the Government. As already stated, this Tribunal is also appointed by the same authority. None of the parties or non-parties challenged this authority of the Government before me. Some clue in regard to this is to be obtained in the provisions of clause (ix) itself. That clause envisages consultation by the Government with other Ministries whose workers are likely to be affected as to whether they will like an *ad hoc* Railway Tribunal or an *ad hoc* Commission to be appointed. This part of the clause implies that the final voice in regard to the appointment of the *ad hoc* Tribunal is with the Government.

11. The Scheme, as recorded in the letter dated 24th December, 1951, does not appear to have been couched in precise or unequivocal terms. Several concepts used in that record are not in harmony with one another. For example, at some places, the generic term "railway labour" has been used and, at other places, the names of the two Federations or branches of recognized unions or unions have been referred to. The above difference in nomenclature or terminology has led to an argument that the Scheme is between the railway labour on the one hand and the Railway Board on the other and that, therefore, although the appointment of this Tribunal may have been at the instance of one or the other Federation, the real parties are the Government on the one hand and the railway employees on the other, that the Federations and the other unions are only representatives of the railway labour and as such, they have no *locus standi* in their own right and that, in any case, the railway labour is entitled to butt in for the protection of its own rights in the proceedings of the Tribunal. In my opinion, although the intention of the Government is to devise a Scheme which will keep the railway employees contented, the idea is not to have a dialogue in respect thereof with individual railwayman or

all the unions which may have been formed and with the unions or their branches at the second and the third tiers. The Scheme is framed solely to have discussions and solutions of problems at the first tier with the branches of recognized unions and with unions but if these disputes are not settled with them, even the branches and the unions have no right to discuss them or to find solutions at the second tier. There is not the slightest doubt in my mind that, under the Scheme, labour grievances are to be ventilated and attempted to be settled at the second or the third tier only with the Federation who or whose unions happen to raise the same. In this view of the matter, the expression "railway labour" is a loose expression. The Scheme does not deal with the railway employees directly. It envisages parleys between the branches of recognized unions or the unions at the first tier and one or the other Federation at the second and the third tiers. It is clear that, under the Scheme, no individual railwayman or recognized union has a right to be heard in matters dealt with at the second and the third tiers.

12. From the aforesaid provisions, it is quite clear that the Machinery is self-contained scheme which specifies (1) the parties who are to operate thereunder at the first two tiers, (2) the subjects which are to be dealt with at those two tiers, and (3) if the negotiations fail at the first tier, the matters can be raised over again at the second tier. Thus, though it is open to the Federations to raise certain specified topics for discussion with the Railway Board, the Federations have also a right to raise the topics in regard to which negotiations failed at the first tier for discussion over again. It is also quite clear that the *ad hoc* Railway Tribunal is the logical extension of the first two tiers and the topics which can be raised before the Tribunal are those in regard to which negotiations have failed between the Federations and the Railway Board at the second tier. It is thus quite clear that, at the second and the third tiers, neither the unions nor the branches of recognized unions have any place in the Negotiating Machinery. That place has been exclusively assigned to the Federations.

13. I am not impressed by the argument that the place which has been assigned to the two Federations at these two tiers is a joint one. In my opinion, separate negotiations by each of the Federations with the Railway Board are inherent in the Scheme itself. There are two important indications in the above matter. Firstly, in the second paragraph, it has been stated that if any matters are not settled at the railway level, the same will be taken up "by the respective Federations with the Railway Board". This Paragraph, therefore, envisages that the disputes raised by the branches of the recognized unions or the unions at the first tier can be carried forward to the second tier by the relevant Federation to which they are affiliated. However, some of the non-parties emphasized the use of the plural, "Federations" in the clause relating to the formation of the second and the third tiers and contended that the terminology used in the second paragraph aforesaid should not be allowed to control the language used in the third paragraph. In my opinion, there is nothing in paragraph 3 which conflicts with the above reading of the Scheme in the second paragraph. On the contrary, in my opinion, if one were to insist that the two Federations must join together to carry on further the negotiations which have failed at the first tier, the whole object of the Negotiating Machinery is likely to fail if there is a difference of opinion between the two Federations. Secondly, in my opinion, the provision contained in clause (xi) clinches the matter. In that clause it is specifically stated that any matter which is settled either by agreement or in which the Government ultimately accept the decision of the Tribunal, that settlement will be binding on the Federation for a period of two years. In my opinion, therefore, there is no merit in the contention that, in order that a Tribunal may be set up, it is necessary that both the Federations must concur together. In my opinion, the Scheme of the Negotiating Machinery is such that if any matter is raised at the second tier by any Federation and it does not happen to be settled then, an *ad hoc* Tribunal can be set up to deal with the dispute. It is that in the ninth clause as regard the composition of the Tribunal it is stated that there shall be an equal number of representatives of railway labour and the railway administration instead of equal representatives of the Federation and the railway administration. Even if one were to agree (in my opinion, the matter is not free from doubt) that the choice of the members of the Tribunal may not be confined necessarily to the representatives of the Federation concerned and it may be open to the Government to choose the representatives of railway labour from any quarter whatsoever, in any case, the result will be that the decision of the Tribunal, whether accepted or not, will be binding only on the Federation which sponsors the dispute and the failure of negotiations with which leads to the establishment of the Railway Tribunal.

14. Another point which may emerge from the language of clause (ix) is that there are no parties as such before the Tribunal. It appears that the intention is that the Tribunal is to consist of representatives of the two sides as part of quasi-judicial machinery with a neutral Chairman. The machinery of the Tribunal therefore envisages a resolution of the dispute by the agreement of the majority of the representatives of the two sides and, in case they differ, the opinion of the neutral Chairman will clinch the matter.

15. A few of the non-parties contend that the PNM Scheme is either unconstitutional or illegal and, therefore, inadmissible in evidence. The objection is based on Articles 77 and 299 of the Constitution. I fail to see how this objection can advance the cause of the non-parties in the matter of the grant of the three or any of those three prayers. If that Scheme is either unconstitutional or illegal, then, it may render the appointment of this Tribunal unconstitutional or illegal but it cannot be made a ground for the grant of any of those prayers. However, I am not impressed by the argument that the PNM Scheme is unconstitutional or illegal and therefore inadmissible in evidence. Now, as I read this Scheme, it does not appear to be a contract between the Railway Board and the two Federations. In considering the above objection, one must bear in mind that the letter dated 24th December, 1951 does not purport to be a document formally agreed to by the Railway Board and the AIRF at whose instance the original parleys were held and which resulted in the formulation of the

above scheme. The Scheme appears to be more a decision taken by the Government after taking into consideration the views expressed by the AIRF at the parleys. It appears that, probably, that decision was communicated to the two Federations and they expressed their agreement to or acquiescence in the same but that does not mean that there was a formal contract between the parties. It appears to be more a decision of the Government which formulated an arrangement for discussion and resolution of railway labour problems and which decision was accepted by the two Federations. Moreover, in substance, the above Scheme is a domestic arrangement which is formulated by the Government in order that Railway problems may be discussed domestically and solutions thereof found in a or a series of domestic forums. Though the Scheme formulated by the Government has been agreed to or acquiesced in by the two Federations, it cannot be said to be a contract. It is not a contract because it does not appear to be supported by any consideration. In that view of the matter, in my opinion, Article 299, which requires contracts of the Government to be expressed to be made by the President and to be executed on his behalf by authorised persons, has no application to the facts of the case. The objection under Article 77 is based on the ground that the Scheme has not been expressed in the name of the President and is not authenticated as required by clauses (1) and (2) of that Article. However, the provisions of the latter two clauses have been held to be directory and not mandatory. Under Article 53, the executive power of the Union is vested in the President and it has to be exercised by the President in accordance with the Constitution either directly or through officers subordinate to him. Clause (3) of Article 77 says that the President shall make rules for the more convenient transaction of the business of the Government of India and for the allocation among Ministries of the same business. It is obvious that if the President is acting through his subordinate officers, then, the action taken by the Government must comply with the provisions of clause (3). None of the non-parties who raise the above objection contends that the rules made under clause (3) aforesaid have not been complied with. In fact, my attention is not drawn to any rule for the allocation of business framed by the Government which can be said to be violated in the formulation of above Scheme. In that view of the matter, I am not impressed by the argument that the PNM Scheme is either unconstitutional or illegal and that, therefore, it is inadmissible in evidence.

16. Now, of the three prayers which have been made by the non-Parties, I propose to take up for consideration the prayer for joinder of parties first because it is quite clear that if that prayer deserves to be granted, then the other two prayers must follow suit, though if that prayer comes to be rejected, the other two prayers may have still to be considered on their own merits.

17. From the submissions which I have summarized above, it is quite clear that the main point for determination is as to whether this Tribunal has been constituted under the PNM Scheme or whether it has been constituted under the Act. Now the answer to this question must, to a large extent, depend upon the interpretation of the resolution dated 28th January, 1969 which appointed this Tribunal. It is true that the PNM Scheme envisages the appointment of a Tribunal and that it is common ground that the disputes which have been referred to this Tribunal are those which were negotiated and settlement in regard to which failed at the second tier. It is true that the Government has the power to appoint a Tribunal both under the PNM Scheme as also under the Act. But the mere fact that the Government has the power to appoint a Tribunal under the PNM Scheme does not necessarily mean that this Tribunal was appointed in exercise of that power. Having regard to the fact that the Government also has the power of appointing a Tribunal or a National Tribunal under the Act, the answer to the aforesaid question must necessarily depend upon what the Government does—whether it is exercising its power under the PNM Scheme or under the Act.

18. Now the resolution appointing this Tribunal consists of five paragraphs. The first paragraph makes a mention of the PNM. It says that the Machinery provides that, if after discussions with the Railway Board and the railway labour federation, agreement is not reached on any matters of importance, such matters may be referred to an *ad hoc* Railway Tribunal consisting of an equal number of representatives of railway labour and the Railway Board with a neutral Chairman. The second paragraph states that the NFIR has urged that certain matters in regard to which agreement is not reached are of sufficient importance to warrant a reference to a Tribunal. Then it goes on to state that the Government has accepted this contention and has decided to appoint an *ad hoc* Tribunal. The paragraph further states that it is agreed between the NFIR and the Railway Board that this Tribunal should consist only of one neutral person “representatives of the federation and the Railway Board being permitted to present their cases before him”. The third paragraph says “Accordingly” the Government of India had decided to appoint me as the one-man Tribunal. The fourth paragraph mentions the various items of dispute.

19. In my opinion, there is not the slightest doubt that the Government was constituting this Tribunal under the power vested in it under the PNM Scheme. In my opinion, if this were not so, there was no necessity for the Government to make a reference to that Scheme in the first paragraph, nor was there any necessity for the Government to make reference to the contention of NFIR that the disputes in regard to which negotiations had failed were of sufficient importance to warrant reference to a Tribunal, nor would it have been necessary for the Government to state that the *ad hoc* Railway Tribunal under the PNM Scheme was to consist of an equal number of representatives of railway labour and the Railway Board with a neutral Chairman but that, in the present case, the NFIR had agreed that the Tribunal should consist only of one neutral person, the representatives of the Federation and the Railway Board being permitted to present their cases before him. However, the main argument against the above line of reasoning is that the first two paragraphs are only recitals containing the history of the dispute and the machinery under which it was negotiated and that those recitals should

not be allowed to control the operative part of the resolution which is contained in the third paragraph which constitutes the Tribunal. I cannot accept this argument. In my opinion, the word "Accordingly" in paragraph 3 necessarily connects the PNM Scheme with the order of appointment. One of the contentions is that the Tribunal is constituted by the Government and not by the Federation and the Railway Board. It is contended that the decision to appoint the Tribunal is that of the Government and not of the contending parties and that, therefore, the appointment cannot be under the PNM Scheme. I cannot agree. As I have already mentioned, the PNM Scheme is silent as to who is to appoint, in case of disagreement, an *ad hoc* Tribunal. I have indicated that the two parties who agreed to the implementation of the Scheme do not dispute that the appointing authority is the Government. This consensus is confirmed by the provision in clause (x) of the Scheme that it is open to the Government to consult the other Ministries whether there should be an *ad hoc* Tribunal or an *ad hoc* Commission. Another argument which is urged is that, in any case, the Tribunal under the PNM Scheme is different from the Tribunal which has been actually constituted. Under the PNM Scheme the Tribunal is to consist of equal number of representatives of railway labour and the Railway Board with a neutral Chairman, whereas under the order of appointment only one-man Tribunal is constituted. I do not think that this variation in the constitution of the Tribunal makes any difference, especially when the resolution itself mentions the agreement between the NFIR and the Railway Board as varying the constitution. In my opinion, if the Government is not acting under the PNM Scheme, then, there will be no necessity for it to mention this agreement about the variation in the constitution of the Tribunal. One of the arguments which is advanced is that such a variation cannot be unilaterally made by only one of the Federations. It is contended that, if any variation is to be made, it will necessarily have to be made by agreement with both the Federations. In my opinion, there is no substance in this argument also. I have already mentioned that the Scheme of the Negotiating Machinery envisages settlement of disputes by each Federation separately and that it does not necessarily envisage a joint settlement. I have also mentioned that there is a connection between the second and the third tiers inasmuch as the disputes which are to be raised at the third tier are those which were raised between the Federation concerned and the Railway Board at the second tier. Having regard to this inter-connection and specially having regard to the provision relating to the decision of the Tribunal binding only the Federation which sponsors the dispute at the second tier, it is not necessary that both the Federations must concur together for any variation in regard to the constitution of the Tribunal. Under the circumstances, there is no doubt whatsoever that the Tribunal was constituted by the Government under the power which it had under the PNM Scheme.

20. However, the argument is that, having regard to the fact that in clause (ix) of the PNM Scheme, it was not specifically stated as to who is the appointing authority for the *ad hoc* Tribunal, I must hold that the present Tribunal has been constituted by the Government under the power vested in it under the Act, specially when all the ingredients of the constitution of a Tribunal under the Act have been satisfied in the present case. In this connection, reference is made to section 7-A and 7-B which respectively confer power on the Government to constitute a Tribunal and a National Tribunal. Section 7-A states that the appropriate Government may, by notification in the Official Gazette, constitute one or more industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and that such a Tribunal shall consist of one person only to be appointed by the appropriate Government. Section 7-B states that the Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of Industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes and that such National Tribunal shall consist of one person only to be appointed by the Central Government. Sub-section (3) of section 7-A and the same sub-section of section 7-B mention the qualifications of the Tribunal and the National Tribunal respectively and the qualification which is relevant to be mentioned is that the person is or has been a Judge of a High Court. The contention is that the disputes which have been referred to this Tribunal are all industrial disputes within the meaning of section 2(k) of the Act, being disputes between the railway administration as the employer and its workmen, that the Central Government is the appropriate Government in regard to a railway dispute as appears from the definition of the expression "appropriate Government" given in section 2(a) and that the person actually appointed is the person who has been a Judge of a High Court. Section 10 of the Act says that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may, at any time, by order in writing, *inter alia*, refer the dispute to a Tribunal for adjudication. Section 10(1A) says that where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute, and the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute to a National Tribunal for adjudication. The contention is that all these ingredients are satisfied in the present case and there is no reason, simply because the Government has chosen to give a history of the dispute which has led to the present appointment, to believe that the Government is not acting under the above provisions which apply *in toto* to the present appointment.

21. In my opinion, there are serious difficulties in accepting the aforesaid line of reasoning. In the first instance, though broadly the disputes which have been referred to me for decision are industrial disputes, they are not such disputes within the meaning of the Act. An "Industrial dispute" has been defined in section 2(k)

of the Act as a dispute or difference *inter alia* between "employers and workmen". Now the expression "employer" has been defined in section 2(g) of the Act to mean *inter alia* "in relation to industry carried on by or under the authority of any department of the Central Government. . . the authority prescribed in this behalf or where no authority is prescribed, the head of the department". Now the authority referred to in this clause (g) has been prescribed in rule 2 clause (g) sub-clause (ii) of the Industrial Disputes (Central) Rules, 1957. The prescription is that, in relation to an industry concerning railways, carried on by or under the authority of a Department of the Central Government, in the case of establishment of Zonal Railway, the General Manager of that Railway shall be the employer in respect of regular railway servants other than casual labour. In regard to the latter the prescribed authority is the District Officer-in-charge or Divisional Personnel Officer or the Personnel Officer. Now, having regard to the Scheme of the Negotiating Machinery, a dispute at the second tier is only a dispute between the Railway Board and the Federation. It is true that in a labour dispute raised by a union dispute is not between the employer and the union as such but it is between the employer and the workmen, the union being only a representative of the labour. It may be that at the stage at which the dispute is raised before the General Manager and the union the dispute may be an industrial dispute but if the parties are operating under the PNM Scheme, then, it is clear that the union has no place for negotiations at the second tier where, as already stated, the parties are the Railway Board and one of the Federations. It is not the dispute which is pending at the first tier which is referred to the *ad hoc* Tribunal. The dispute which is referred to the Tribunal is the dispute which is raised and negotiated between the Railway Board and the Federation at the second tier. That dispute may have been raised because it was not settled at the first tier or it may have been independently raised but all the same the dispute which is referred at the third tier is the dispute between the Railway Board and the Federation. One of the items of disputes which has been referred in this Tribunal is in relation to casual labour. It is not clear whether this item was ever discussed and failed at the first tier before one of the officers mentioned in the definition of "employer" in rule 2(g) above. In any case, when the matter is carried to the headquarters level, the dispute will be between the General Manager and the union concerned and, that being so, the dispute between casual labourers and the General Manager would not be an industrial dispute within the meaning of rule 2(g) aforesaid. That being so, having regard to my conclusion that the appointment of this Tribunal is made under the PNM Scheme, the dispute referred to this Tribunal will not be an industrial dispute so as to come within the purview of section 7-A or 7-B or 10(1) or 10(1A) of the Act. Thus those sections are not attracted. There is another and more formidable objection to the contention that this Tribunal is either a Tribunal or a National Tribunal. It is quite clear that both a Tribunal or a National Tribunal is to consist of only one person. It is true that this Tribunal consists of one person only. But the validity of the above argument is to be tested, not by the actual constitution of the Tribunal but also by its potential constitution. An *ad hoc* Tribunal to be constituted under the PNM Scheme is to consist of more than one person. If the NFIR and the Railway Board had not agreed to the Tribunal being constituted of one neutral person alone, then, it is quite clear that the Tribunal which would have been set up under the PNM Scheme will have offended the provisions contained in section 7-A(2) and 7-B(2) which say that a Tribunal and a National Tribunal are to consist of one person only. Moreover, the mere fact that the person presiding over the Tribunal answers the qualification of a High Court Judge is not again a crucial test. The crucial test is as to whether under the PNM Scheme the persons appointed will necessarily answer that qualification. In my opinion, whereas it may be expected that the neutral Chairman may answer this qualification, the representatives of labour or of the Railway Board or of the railway administration will not answer that qualification. Under the circumstances, the *ad hoc* Tribunal envisaged in the PNM Scheme is entirely of a different ilk from that which is envisaged in section 7-A or 7-B of the Act. Moreover, the procedure which will govern an *ad hoc* Tribunal under the PNM Scheme is different from the procedure which will govern a Tribunal or a National Tribunal. Under section 11 of the Act, a Tribunal or a National Tribunal has to follow such procedure as it may think fit but subject to any rules that may be made in that behalf. Under the PNM Scheme the *ad hoc* Tribunal is to follow the procedure which is expected to be prescribed for it, when the Tribunal is to be set up for the first time. That procedure has not been made subject to the rules prescribed under the Act. It is true that no such rule has yet been prescribed under that part of clause (ix) of the PNM Scheme. That means that the present Tribunal has the power to prescribe its own procedure. But that power is not subject to rules made under the Act. There is also a vital difference regarding the power of the Government to modify, reject or accept an award under the Act and the same power exercisable by the Government under the PNM Scheme. Under the Act, if the Government rejects or modifies an award of a Tribunal or a National Tribunal, it can do so only on public grounds effecting national economy or social justice, whereas the power of the Government to reject or modify an award under the PNM Scheme is not fettered by any such restriction. Secondly, when the Government acts under the Act, it is enjoined to lay the award together with a copy of its order rejecting or modifying the award before Parliament but under the PNM Scheme the Government is not bound to do the latter. There is also difference between the period for which an award under the Act is binding on the parties concerned and the period for which a decision under the PNM Scheme is binding. An award under the Act is binding for a period of one year only. The Government has power to reduce or extend it. A decision under the PNM Scheme, if accepted, is binding for a period of two years and if rejected or modified, is binding for a period of one year with no power to the Government either to extend or reduce any of the two periods. An award under the Act is binding on the non-parties under the circumstances mentioned in section 18. A decision under the PNM Scheme is not binding on any one excepting the Federation which sponsors the dispute. As I shall presently show, the effect of the PNM Scheme is that the Federation concerned, that is the Federation at whose instance the *ad hoc* Tribunal has been constituted, is only prevented from espousing the cause decided by the Tribunal. It does not prevent the workmen from resorting to the machinery provided under the Act.

There are also cogent reasons why this Tribunal cannot be a National Tribunal. Under the Act, a National Tribunal can be appointed only when, in the opinion of the Central Government, the matter in dispute is of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute. An *ad hoc* Tribunal under the PNM Scheme can be appointed if the dispute is of sufficient importance only. In the present case, it is on the latter ground that the present Tribunal has been appointed. Now a matter which is of sufficient importance is not necessarily always of national importance. The two kinds of importance are not convertible. In any case, it is not for this Tribunal to form an opinion whether the matters referred to are of national importance or not or whether the matters affect more than one establishment. It is for the Central Government to form an opinion in regard to one or both these matters before the appointment of a National Tribunal is made. There is no indication in the resolution that the Central Government had formed an opinion on either of these two points. There are one or two other points which also indicate that the Tribunal is not appointed under the Act. Under the "Rules of Business" framed by the President for the transactions of the Government work under Article 77 of the Constitution, the business of appointing a Tribunal or a National Tribunal is allocated to the Labour Ministry. The resolution appointing this Tribunal is not made by that Ministry but by the Railway Ministry which, under the Rules of Business, is dealing with railway matters including the operation of the PNM Scheme. The appointment of a Tribunal or National Tribunal is published in the statutory part of the Central Gazette. The appointment of this Tribunal is not published in that part of the Gazette but in the non-statutory part thereof. Moreover, it will be very odd, whilst appointing a Tribunal or a National Tribunal, for the Government to make a reference to the agreement of one or both of the parties that the Tribunal shall consist of only one person as against several persons who are to be constituted under the PNM Scheme. It will also be very odd for the Government to mention the persons who would be represented before the Tribunal. Under the circumstances, in my opinion, the mere fact that the present Tribunal has been appointed by the Government and that the person presiding over it has the qualification to be appointed a Tribunal or a National Tribunal is not conclusive of the matter. In my opinion, having regard to my finding that the appointment is under the PNM Scheme and having regard to all the aforesaid considerations, the contention of the non-parties that the present Tribunal is under the Act, even though the Government may be operating under the PNM Scheme, is not correct and cannot be accepted.

22. Taking a broad view about the status of this Tribunal, I have not the slightest doubt that it is the creature of the PNM Scheme, the appointment of which is designed under the Scheme to settle disputes which have defied solution at the second tier. The Tribunal is one of the three tiers formed for the solution of the railway labour problems. Any decision which is reached by the Tribunal is no better than any decision which may be reached at any of the first two tiers. In fact, the Tribunal represents the apex of the third tier. The Scheme appears to be a private arrangement for the purpose of reaching a solution which otherwise it is not possible for the Railway Board and any of the two Federations to reach. Therefore, in my opinion, the Tribunal contemplated under the Scheme is a domestic Tribunal which derives its power and strength from the Scheme itself which is formulated essentially with a view to solve the disputes domestically. The framers of the Scheme thought that if any problem defied solution, the only reasonable way of solving it privately would be to appoint a private Tribunal consisting of the representatives of the two sides with a neutral Chairman whose decision would be communicated to the Government and after being so processed might lead to industrial peace for a period of time. A Tribunal or a National Tribunal under the Act derives its strength from the fact that a part of judicial function of the State has been transferred to it by an Act of Parliament. In my opinion, when the Government acts under the PNM Scheme, it does not so transfer any part of its judicial functions. The power of the Tribunal under the PNM Scheme to decide matters is essentially derived from the Scheme itself which, as already stated, contemplates contact with railway labour, raising of disputes at conferences, attempting to solve them either by agreement or by appointment of a Tribunal in which both the parties are represented with a neutral Chairman to help them to reach a solution in case the disagreement still persists.

23. One of the points urged is that the Central Government has no executive competence to appoint this Tribunal and, that being so, I must act on the principle that, when two interpretations can be placed on a document, one must lean in favour of that which would make it a valid document or which would make the document valid rather than invalid. In my opinion, there are several fallacies underlying this argument. In the first instance, the above principle can apply only if the document is capable of more than one interpretation. In the present case, I am not convinced that the resolution appointing this Tribunal is capable of more than one construction as regards the power under which it has been appointed. In my opinion, the document is capable of only one interpretation, namely, that the power which the Government is exercising is under the PNM Scheme. Moreover as already pointed out, if the power is exercised under the Act, then, the appointment is likely to be invalid for reasons which I have already enumerated above. Moreover, there is no merit in the contention that the Central Government has no executive competence to appoint a Tribunal under Article 73 of the Constitution. This contention is based upon the proviso to that Article. The contention is that the true meaning of that Article is that the executive power of the Union cannot be exercised in regard to an item which is in the Concurrent List unless such a power has been expressly provided for in the Constitution or in any law made by Parliament. The further contention is that there is nothing either in the Constitution or in any law made by Parliament which confers such an executive power on the Union in regard to that Entry in the Concurrent List. The Entry which is referred to is No. 22 which refers to trade unions, industries and labour disputes. It is not necessary for me to decide whether the construction propounded is correct or not. Even

assuming that it is so, in my opinion, the executive power which the Union exercises in regard to railway employees is referable not to Entry 22 in List No. III but is referable to Entry No. 61 in List No. I. That Entry relates to industrial disputes concerning Union employees. It is not disputed that railway employees are Union employees. Under the circumstances, in my opinion, when the Union exercises any executive function in relation to a dispute between railway employees and itself, it is acting in a field, the law-making power in regard to which is in the legislative domain of Parliament. Under the circumstances, in my opinion, when the Government is acting under the PNM Scheme, the executive power of the Union is being exercised under clause 1(a) of Article 73 and not under the proviso as contended. Therefore I am unable to agree with the submission that when the Union exercised the power of appointment of this Tribunal, it exercised the power vested in the Parliament under the Concurrent List.

24. Another objection which is raised is that the appointment of a Tribunal *de hors* the Act will offend the provisions contained in the Act. The broad submission is that, Parliament in its wisdom has enacted a law for solution of industrial disputes and that the machinery which the Act has provided for is the only machinery which must be resorted to for the solution of such disputes. It is contended that railway labourers will suffer *vis-a-vis* other labourers if a Tribunal were to be appointed under the PNM Scheme and not under the Act. In my opinion, this submission is based upon a misapprehension of the scope and effect of the PNM Scheme. The PNM Scheme is not designed to override any provision of the Act. It does not debar railway labour at any time whilst a matter is being discussed at any of the three tiers from resorting to any right which is conferred upon it under the Act. In fact, having regard to my finding that the only party which can operate at the second and third tiers under the Scheme is one of the two Federations, the only effect thereof, in case an agreement is reached or a decision is arrived at by *ad hoc* Tribunal appointed under the PNM Scheme, is that the Federation concerned will be prevented from espousing the cause of any section of the railway labour which it represents for a certain period of time. But that does not mean that workmen who are the vital parties under the Act will be prevented from resorting to the provisions of the Act or to various machineries which have been created for the solution of workmen's problems. For example, the Act confers a right on railway workmen to give a notice of strike. That right has not been taken away by the PNM Scheme. In other words, the PNM Scheme is a private arrangement which has been formulated by the Government and agreed to by the two Federations for the purpose of resolving their disputes domestically and whilst it helps the two sides to arrive at a settlement privately, if they can, it does not shut the door of the industrial law for the purpose of resolution of such disputes in spite of their resolution at the third tier.

25. One more contention which is urged is based upon rule 58 sub-rule (4) of the Industrial Disputes Rule, 1957. That rule deals with a settlement which has been defined in section 2(p) of the Act to be a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the officer authorised in that behalf by the appropriate Government and the conciliation officer. Sub-rule (4) says that when a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a conciliation officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, Labour Commissioner (Central), New Delhi and the Regional Labour Commissioner (Central) and to the Conciliation Officer (Central) concerned. I am unable to appreciate a reference to rule 58. It deals with a settlement and not with the appointment of a Tribunal. It may be that a decision reached by this Tribunal as accepted, modified or rejected by the Government may amount to a settlement within the meaning of section 2(p) of the Act and it may require to be processed through in the manner laid down in sub-rule (4) of rule 58. But that does not render the appointment of this Tribunal invalid. In fact, there are some provisions in the Act itself which envisage an antecedent agreement which may result in a settlement or a reference to arbitration which may lead to the same result. The latter part of the definition of the word "settlement" contemplates a settlement by agreement. Section 10A of the Act contemplates a voluntary reference of disputes to arbitration. Section 18-sub-section (1) of the Act expressly mentions a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceeding. The PNM Scheme by itself is not a settlement. It is only an antecedent arrangement which may result in a settlement at any of the three tiers. Under the circumstances, in my opinion, there is no merit in the contention that the appointment of this Tribunal will offend the provisions contained in rule 58 or the definition of the word "settlement" as given in the Act.

26. One more contention which is urged is that the Tribunal is Board of Conciliation constituted under section 5 of the Act. I am unable to agree with this contention also. A Board has been defined in section 2(c) to mean a Board of Conciliation constituted under the Act. Sub-section (2) of section 5 says that a Board shall consist of a Chairman and two or four other Members as the appropriate Government thinks fit. Under the circumstances, it is quite clear that a Board must consist at least of three persons and may consist of five persons. The present Tribunal is a one-man Tribunal. Therefore, it is not easy to understand how the present Tribunal can be said to be a Board of Conciliation.

27. Another contention is that the Act having been put on the Statute book, there is no power left in the Union to constitute any Tribunal. This contention is supported on the broad submission that executive power is the residue of the legislative and judicial powers. The contention is that the legislative power having been

exercised in regard to industrial disputes by Parliament, there is nothing left for the executive to take any action on. I am unable to agree with this contention also. I have already pointed out that the Act contemplates settlement by agreement. Therefore, any antecedent arrangement arrived at between the parties for settlement of the disputes cannot be stated to be an agreement offending industrial law. On the contrary, such an arrangement will be quite consistent with that industrial law. It is well known that a dispute may be settled either by direct agreement between the parties or, if no such agreement is reached, by referring the dispute to the arbitration of a person or a set of persons.

28. Some of the non-parties build up an argument on the basis of the use of the word "Tribunal" in the resolution dated 28th January 1969. Their contention is that a Tribunal is essentially one to which a part of the judicial power of the State has been transferred and that such a word cannot have been used if the intention of the Government was to appoint a domestic body. However, in my opinion, the use of the word "Tribunal" is not conclusive. In order to determine the status of a body, though it may be borne in mind that the word "Tribunal" is usually associated with a body to which a part of the judicial functions of the State is transferred, in order to determine the actual status of such a body, the other factors must equally be taken into consideration. In my opinion, taking into consideration the other factors which I have mentioned above, it cannot be said that this is a Tribunal in the above sense.

29. However, some of the non-parties make a strong plea for grant of their prayers on the basis of the principles of natural justice. The argument is that they are all concerned with either all or some of the items of reference and any decision reached by this Tribunal is bound to affect them. It is, therefore, contended that it will be violating the principles of natural justice if a decision were to be reached on those items without either joining them as parties or without at least hearing them. In this connection, strong reliance is placed upon the latest pronouncement of the Supreme Court in the case of *Kraipak and others v. Union of India* (Writ Petitions Nos. 173 to 175 of 1967) decided on 29th April 1969. It is contended that the frontiers of the application of the above principles have now been extended even to administrative tribunals. With great respect, I am bound by the enunciation of the above principle by their Lordships of the Supreme Court but I am unable to see how that principle can be applied to the present facts or circumstances. Having regard to my conclusions that the Tribunal is the creature of the PNM Scheme, that it represents the third tier where the dispute is between the Railway Board and one of the two Federations and that the decision reached at the third tier is binding only on the Federation which has raised the dispute at the third tier, I am unable to see how the persons who were not parties to any of the first two tiers and who are not party to the third tier can have a right of being heard, much less of being joined as party. Moreover, since the PNM Scheme is a domestic arrangement arrived at between the Railway Board and the Federations, the Tribunal is bound by the letter and spirit of that Scheme. Just as at the second tier, the branches of recognized unions or the unions have no right to raise disputes or to take part in their solution, similarly, such branches of unions have no right to take part in the disputes which remain unsettled at the second and the third tiers. In fact, if a solution were to be found between the Railway Board and the Federation concerned at the second tier, neither the unions nor the branches of the recognized unions will have a right of raising any dispute about it under the PNM Scheme at the third tier. Moreover, none of the learned counsel representing the non-parties who appeared before me ever contended that under the rule of natural justice, a non-party has a right to be joined as a party in a domestic tribunal set up by the parties. Just as in the case of private arbitration the arbitrator has no power of bringing in persons to have not agreed to make reference to him, similarly, in my opinion, on the same principle, this Tribunal has got no power *de hors* the Scheme to bring in any party. There is no merit in the contention that railway labour will be adversely affected by the decision of this Tribunal. The mere fact that they will be affected is not enough to invoke the principle of natural justice. It is only if an adverse decision were to be given against them that there would be scope for such invocation. If, as a result of the decision of this Tribunal any benefit is to accrue to the railway employees, that benefit undoubtedly will accrue not only to those railway employees whose unions have been affiliated to the NFIR but to the entire labour in general because it is not possible to contemplate that the Railway Board will implement any decision of this Tribunal in regard to only a part of the railway labour but the result of implementation of the decision of this Tribunal will be not to affect the railway employees adversely. They would derive a benefit therefrom if any decision is in their favour but in so far as the decision does not meet the full extent of the demand of the railway employees, having regard to my conclusion that the decision has the effect only of preventing the NFIR from espousing the cause of the labourers in contravention of that decision, it cannot be said that the other employees are debarred from raising the dispute over again and having recourse to industrial law for the purpose of resolving that part of the dispute which remains unsolved for them or such part of the decision which does not give them the fullest benefit which they are contending for. In *State of Orissa v. Binapani*, A.I.R. 1967 S. C. page 1269, their Lordships have held that an order of the Government may be attacked on the principles of natural justice when it involves civil consequences. In my opinion, having regard to the consequences of the decision which may be reached by this Tribunal, it is not possible to say that the order or the decision of the Tribunal will affect adversely the railway employees whose cases cannot be espoused by the NFIR or even those whom the NFIR represent.

30. Another point is based on clause 20 of the Scheme For Joint Consultative Machinery of Compulsory Arbitration For Central Government Employees. This Scheme provides for reference of certain disputes to arbitration in cases of dissidence between the Central Government and its employees. The first sub-clause of clause 20 says that, in determining a dispute, the Board of Arbitrators shall examine the merits of the case presented

by the official and staff sides and take into account all other relevant factors including the principles enunciated in any recent Report of the Commission of Inquiry. Sub-clause (ii) of clause 20 states that matters determined by the Government in accordance with the recommendation of the Commission will not be subject to arbitration for a period of five years from the date of the recommendations, after which they will become arbitrable with reference, as far as possible, to the factors referred to in sub-clause (i) above. The argument is that any recommendations which this Tribunal may make and whether accepted, rejected or modified, will debar the railway employees from resorting to the machinery of arbitration as set up in the above scheme for a period of five years. I am unable to agree with this contention. In the first instance, the ban on arbitration arises from out of the decision taken by the Government in accordance with the recommendations of a Commission. Having regard to my finding that this Tribunal is the creature of the PNM Scheme which is a private arrangement arrived at by the Government with the concurrence of the two Federations, the Tribunal does not have the status of a Commission so as to attract the prohibition contained in clause (ii) aforesaid. As regards the injunction to the Board of Arbitration to take into account the principles enunciated in any recent report of a Commission of Inquiry, in my opinion, there is the same infirmity in the argument inasmuch as this Tribunal is not a Commission of Inquiry. The mere fact that the word "etc." has been put after the expression "Commission of Inquiry", in my opinion, does not make any difference. But even if that clause were to apply, I am unable to see how that can justify the inclusion of any body of Government servants as parties to this Tribunal. Even if any principles are enunciated by this Tribunal, the same will not automatically be accepted by the Board of Arbitration. These principles will be only one of the factors which the Board of Arbitration will take into account. Those railway employees who are not parties before me will have the right of making their own submissions against the principles, if any, enunciated by this Tribunal and I am sure the Board of Arbitration will take into account any criticism of the principles which may be enunciated in the absence of the railway employees concerned when advanced by the absentee railway employees.

31. I am also unable to come to the conclusion that simply because some of the Unions have no faith in the NFIR they have a right to butt in the proceedings of this Tribunal. The NFIR has espoused the cause of some of the railway employees, the unions of which are affiliated to that body. Such a right has been conferred upon the Federation by the PNM Scheme. If the unions which are not affiliated to the NFIR have no faith in that body, it is open to them to take such measures either under the PNM Scheme or the industrial law to ventilate their grievances and to demand solution for them or to take such measure for collective bargaining or such coercive measures as they are entitled to under the industrial law.

32. That leaves for consideration the special position which AIRF occupies under the PNM Scheme. Whatever may be the view which one takes regarding the PNM Scheme as to whether it is the result of an agreement between the Railway Board on the one hand and itself and NFIR on the other or whether it is a decision of the Government which has been acquiesced in by those parties, there is no doubt whatsoever that the AIRF has a place in the above Scheme. It is on record that the AIRF has raised a number of points which have been already processed through the first and the second tiers of the Scheme. There is also force in the contention of the AIRF that some of the demands which it or the unions which are affiliated to it had raised at the above levels are either the same or similar to the demands which the NFIR has made and which have been referred to this Tribunal. In that view of the matter, one can appreciate and understand the feelings of the AIRF as to why the third tier is not being brought into force so far as that body is concerned. One of the grounds which may have weighed may be that, when this Tribunal was constituted, the AIRF was de-recognized. However, now the position is different. Moreover, this Tribunal is not concerned with the merits or demerits of the contention of the AIRF that its demands also should have been taken up for decision at the third tier. The question for my consideration is whether under the PNM Scheme the AIRF has a right to be joined as a party when the third tier has been brought into operation at the instance of the other Federation. Having regard to my conclusion that the two Federations do not operate at the first two tiers jointly but severally and especially having regard to my conclusion that any decision which will be given by this Tribunal will be binding only on the NFIR and not AIRF, I do not see my way as to how AIRF can be joined as a party as a matter of right. In my opinion, the only privilege which the AIRF has under the Scheme is to press for the constitution of a Tribunal as envisaged in the Scheme or a Tribunal with such variation as the Railway Board and the AIRF may agree to. It is only by the constitution of such Tribunal that the AIRF can have its disputes processed at the level of third tier. It has no right to butt in a dispute which is being processed at the third tier at the instance of the Railway Board and the NFIR. Moreover, there is some force in the contention of the NFIR that even if the demands of the AIRF are similar or the same, its joinder as a party may lead to conflict of approach in the submissions and arguments by the two Federations and thus, instead of helping the Tribunal to reach correct conclusions, may hamper it in the resolution of the disputes. In any case, in my opinion, having regard to the fact that AIRF can get its grievances ventilated either through the PMN Machinery or under the general industrial law, there is no reason why the present Tribunal set up as a result of a private arrangement should pass an order joining the AIRF as a party.

33. It is true that the main object of the PNM Scheme is to bring about industrial peace and to keep the railway employees contented. It is also true that by rejecting the prayer of the non-parties and specially that of the AIRF, that object is not likely to be achieved. But I am unable to see as to how, because of this position, I can derive to myself the power of joining any of the non-parties as a party before the Tribunal. The Tribunal is the creature of the PNM Scheme. I am not concerned with the wisdom and utility of the

Scheme or its capacity to bring about industrial peace and contentment. Being the creature of the PNM Scheme, I am bound by its provisions and the general law of the land. It is not possible for me to transcend either the provisions of the Scheme or the general law.

34. Under the circumstances, after giving my best consideration to all that the non-parties had to say, I am unable to grant their main prayer, namely, that they should be joined as parties before the Tribunal in the face of the opposition of the Railway Board and the NFIR.

35. Having regard to my aforesaid conclusion, it is not difficult to record my finding as regards the other two prayers. In my opinion, if the primary prayer fails, the other two prayers must also fail when they are founded on a right to make representations or to lead evidence in the case. Not being parties before the Tribunal, none of the non-parties has a right either to make a representation or to lead evidence and to call upon the Railway Board and/or NFIR to submit their arguments on such representations or such evidence which the non-parties may choose to bring.

36. However, before I conclude, I wish to guard myself on one point. The Scheme specifically states that the Tribunal "will be enabled to make such investigations as they deem necessary before they give their decision". Having regard to this part of the Scheme, if at a later stage I find it necessary to derive any assistance or to call for any light from any quarter on any of the items in dispute, I should not be taken to have decided by this order that I have no such power. It will be open to me at any stage to call for such evidence as I may consider necessary for the purpose of reaching a decision from any quarter including the quarter of the present non-parties.

37. For the above reasons. I have come to the conclusion that none of the prayers of the non-parties can be granted. The same are rejected hereby. The parties and non-parties may be informed about the above decision in due course.

Sd/-

N. M. MIABHOY

Chairman,

Railway Labour Tribunal, 1969.

18-12-1969

APPENDIX D

Regd. A.D.

N.F.I.R.

NATIONAL FEDERATION OF INDIAN RAILWAYMEN

(Registered under the I. Tr. U. Act.)

Ref. No. RLT/69.

166/1, Panchkuian Road,
New Delhi-1.

URGENT

The Secretary,
Railway Labour Tribunal,
Old Station Building,
Ahmedabad-2.

Dear Sir,

Enclosed please find a Submission made on behalf of the National Federation of Indian Railwaymen for the consideration of the Hon'ble Tribunal.

A copy of the Submission has been forwarded to the Additional Director (Establishment), Railway Board, New Delhi.

Thanking you,

Yours faithfully,

Sd/- Keshav H. Kulkarni,
General Secretary.

Encl :

APPENDIX D—(Contd.)

N.F.I.R.

NATIONAL FEDERATION OF INDIAN RAILWAYMEN

(Registered under the I. Tr. U. Act.)

Ref. No.

166/1, Panchkuian Road,
New Delhi-1.

Before the Hon'ble Railway Labour Tribunal, 1969.

Submission on behalf of the National Federation of Indian Railwaymen.

On behalf of the National Federation of Indian Railwaymen we have to respectfully submit as follows :—

The subjects currently under reference to the Railway Labour Tribunal had been raised by the National Federation of Indian Railwaymen in the P.N.M. meeting held with the Railway Board at different times. Some of the items, as for example the Payment of Night Duty Allowance and Daily rates of Pay of Casual Labour, were raised as far back as 1962. However, the NFIR finally wrote to the Railway Board on 24th July 1968 drawing their attention to some of the important items that had been discussed in the P.N.M. meetings but on which no agreement had been possible. Through this letter the NFIR endeavoured to impress upon the Railway Board the necessity to refer these matters for a decision to an *Ad hoc* Tribunal under the P.N.M. rules, and further requested the Board to take necessary action accordingly. This request was reiterated by the NFIR Working Committee through a resolution passed at its meeting held on 8th August, 1968.

Consequent to the above representation by the NFIR, discussions were held between the NFIR and the Railway Board on 13th September 1968 when it was decided by agreement that the items currently under reference to the Tribunal, should be referred to an *Ad hoc* Tribunal under the P.N.M. rules. As per this agreement the Hon'ble Tribunal was appointed on 28th January 1969.

In the above circumstances it is respectfully submitted that in all fairness to the employees they should be allowed retrospective effect of the decisions given by the Hon'ble Tribunal. It is also submitted that the NFIR does not seek retrospective effect of the decisions from the dates that the respective issues were initially raised by the NFIR. At the same time the NFIR holds that there is no reason as to why the claim allowed by the Tribunal should not be given retrospective effect at least from 13th September 1968, the date on which the agreement was arrived at between the NFIR and the Railway Board as a result of which the Hon'ble Tribunal was appointed.

On behalf of the NFIR a request has been made to the Railway Ministry to agree to add to the present terms of reference another term requesting the Tribunal to also consider the date from which the findings of the Tribunal are to be given effect to. Whatever be the decision of the Government on this representation, it is respectfully submitted that the Tribunal is competent to consider the question of allowing retrospective effect irrespective of any decision taken by the Government. Instances where retrospective effect has been allowed in arbitration proceedings even without their being a specific term of reference to that effect, are not wanting.

Finally it is submitted that the claims of the NFIR that may be allowed be ordered to take effect from 13th September 1968 for reasons mentioned above. The NFIR shall be much obliged if this matter is taken up for decision at the next session which is being held in Bombay from 16th November 1970.

Also on behalf of the NFIR we beg to reiterate the oral submission made in the last but one session held in New Delhi that the Tribunal be pleased to announce its decisions in respect of the items on which hearings are completed.

for and on behalf of the NFIR,
Sd/- KESHAV H. KULKARNI
General Secretary.

Dated 7th November, 1970.

APPENDIX E
GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(Railway Board)

No. E(LR) 70NM 1-15

*New Delhi, dated 21-12-1970,
30 Agrahayana, 1892*

The General Secretary,
National Federation of Indian Railwaymen,
166/1, Panchkuian Road,
New Delhi.

Dear Sir,

Subject :—Railway Labour Tribunal 1969—Date of effect of the recommendations.

I am directed to refer to your letter No. RLT/69(1) dated 24-10-1970 addressed to the Minister for Railways and your subsequent letter No. RLT/69 dated 7-11-1970 addressed to the Railway Labour Tribunal on the above subject.

The matter was further discussed with you by the Railway Board on 11-11-70 and 12-11-70 when it was agreed to negotiate the question of date of effect of these decisions of the Tribunal in each case and the Minister for Railways was also informed by you accordingly.

I am therefore, directed to inform the Federation that the date of effect of the various recommendations of the Railway Labour Tribunal with the Railway Board in each case after they become available may be negotiated by your Federation.

Please acknowledge receipt.

Yours faithfully,

*Sd/- G. R. VENKATARAMANAN
Dy. Director, Establishment.
Railway Board.*

Copy to the Secretary, Railway Labour Tribunal, Old Station Building, Ahmedabad with reference to the submissions put forward by the National Federation of Indian Railwaymen in their letter to the Tribunal dated 7-11-70 referred to.

*Sd/- G. R. VENKATARAMANAN,
Dy. Director, Establishment (L).*

APPENDIX F

Particularised List of Witnesses examined by parties before the Tribunal

I. Term of Reference No. 1 Night Duty Allowance.

Nil.

II. Term of Reference No. 2 Workshop Staff.

NFIR

1. Shri George Philips, Steel Foundry Foreman, C. & W Workshops, W. Rly., Ajmer.
2. Shri Moti Vazirani, Mistry, Wagon Repair Shop, C. & W. Workshops, W. Rly., Ajmer.
3. Shri C.S.P. Rao, Asstt. Foreman Rate Fixing, Central Rly. Workshops, Parel.
4. Shri Narayan C. Deshmukh, Painter, T.No. 2526, Paint Shop, W. Rly., Parel.
5. Shri R. Govindrajan, Foreman 'B' Planning & Rate Fixing, C & W Workshops. S. Rly., Perambur.
6. Shri S.M. Hussainey, Foreman 'B', Machine Shop, Locomotive Works, Perambur.
7. Shri R.P. Misra, Asstt. Foreman, Machine Shop, Locomotive Works, Charbagh, Lucknow.
8. Shri Y.K. Malhotra, Chargeman 'B' Planning & Rate Fixing Loco Workshops, Charbagh, Lucknow.
9. Shri A.K. Ghosh, Chargeman, Eastern Rly. (J. Shop), Pannel & Under-Frame Shop, Liluah.
10. Shri Harchandan Singh, Chargeman 'C' Loco Workshops, P.C.O. Charbagh, Lucknow.
11. Shri Kuldev Raj, Chargeman 'B' Machine Shop, Signal Workshop, Charbagh, Lucknow.
12. Shri Nanag Ram Singh Asstt. Electrical Foreman 'C' Train Lighting (Neutral), C & W Workshops, W. Rly., Ajmer.

Railway Board

1. Shri I.N. Malhotra, Dy. Director Stores, Technical & Price Fixation, Railway Board, New Delhi.

III. Term of Reference No. 3 Payment of Wages to Casual Labour

NFIR

1. Shri Ramji Lal Sharma, Permanent Way Inspector, W. Rly., Bhawanimandi.
2. Shri P. Chaturvedi, Inspector of Works, W. Rly., Dohad.

Railway Board

1. Shri C.S. Moorthy, DEN (II), Western Rly. Bombay.

IV. Term of Reference No. 4 Hours of work and Gazetted Holidays for Clerical staff.

NFIR

1. Shri Abdul Hamid, Clerk, C & W Depot, W. Rly., Bandikui.
2. Shri Padam Kumar Jain, Clerk under S.S., W. Rly., Phulera.
3. Shri S.S. Patharia, Head Clerk, Loco Shed, W. Rly., Jaipur.

APPENDIX F—(Contd.)

Railway Board

1. Shri T.V. Madhav, Dy. C.P.O., Integral Coach Factory, Perambur.
- V. Term of Reference No. 5 Hours of Employment Regulations.

NFIR

1. Shri B.M. Joshi, Chief Personnel Inspector, N. Rly., New Delhi.
2. Shri J.C. Maheshwari, Asstt. Inspector HER, D.S. Office, Western Rly., Ajmer.
3. Shri T.N. Sharma, Station Master, Sri Madhopur, W. Rly., Jaipur Division.
4. Shri Dharamvir Singh, Station Master, W. Rly., Shamgarh.
5. Shri Guman Singh, Cabin ASM, W. Rly., Phulera.
6. Shri D.S. Gupta, Head Telephone Operator, D.S. Office, N. Rly., New Delhi.
7. Shri N. Mahalingam, Inspector HER, D.S. Office, C. Rly., Jabalpur.
8. Shri C. Varadarajan, Asstt. Labour & Welfare Inspector, Madras Division, S. Rly., Madras.
9. Shri P.R. Prasad, Inspector Wireless Traffic HQ office, N. Rly., New Delhi.
10. Shri G. Balasubrahmanyam, ASM, Golden Rock, S. Rly., Tiruchy.
11. Shri O.D. Sharma, Driver Grade 'C', W. Rly., Gangapur City.
12. Shri N.P. Sur, Dy. Chief Controller, E. Rly., Asansol.
13. Shri V.K. Sharma, Section Controller, C. Rly., Bhopal.
14. Shri N.P. Srivastava, Inspector HER, C. Rly., Jhansi.
15. Shri R.L. Misra, Wireless Inspector, W. Rly., Bombay Central.
16. Shri Jagdish Roy, Head Signaller, N. Rly., Delhi.
17. Shri Santosh Kumar Sawhney, Guard 'B', N. Rly., Delhi.
18. Shri Amar Singh, Cabinman, N. Rly., New Delhi.
19. Shri Shravan Kumar, Cabinman, N. Rly., New Delhi.
20. Shri Raja Raman, Boiler Maker Chageman, Loco Shed, Basin Bridge, S. Rly., Madras.

Railway Board

1. Shri G.N. Malhotra, Sr. Inspector HER, W. Rly., Bombay.
2. Shri S.K. Dutta, Asstt. Personnel Officer, E. Rly., Calcutta.
3. Shri Gurlal Singh, Chief Personnel Inspector, N. Rly., New Delhi.
4. Shri A. Vishwanathan, Dy. Director Signalling (E.B.), Railway Board, New Delhi.
5. Shri K.S. Gupta, Joint Director Finance (Estt.), Railway Board, New Delhi.
6. Shri C.K. Swaminathan, Joint Director Transportation (POL), Railway Board, New Delhi.
7. Shri William Musa,, Wireless Operator, N. Rly., Moradabad.

VI & VII Term of Reference No. 6 & 7—Scales of Pay, etc. of Gangmen, Keymen, Gangmates and Head Trolley-men of Civil Engineering Dept.

NFIR

1. Shri Ramji Lal, Permanent Way Inspector, W. Rly., Bhawanimandi.

APPENDIX F—(Contd.)

Railway Board

1. Shri N.K. Parthasarathy, Dy. Director Efficiency Bureau, Railway Board, New Delhi.

VIII. Term of Reference No. 8 Scales of pay of Running Staff.

NFIR

1. Shri R. Krishan, Guard, C. Rly., Bombay VT.
2. Shri Ben Morris, Guard, S. Rly., Quilon.
3. Shri Manohar Lal Rozdon, Driver, C. Rly., Bombay.
4. Shri O.D. Sharma, Driver Grade 'C', W. Rly., Gangapur City.

Railway Board

1. Shri V.K. Sinha, Dy. Director Transportation (Safety), Railway Board, New Delhi.
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