

represents one of our national assets. The industry's work force is a key resource composed of employees of varied skills and occupations, including those who man the trains." (Report of the Presidential Railroad Commission, p. 23.)

These remarks, even more valid in 1967, highlight the importance of keeping the industry's work force in top-notch condition. This request of the AAR for an exemption is in keeping with that theme.

In its consideration of certain changes in railroad organizational structure and the effect of such changes on employment in the industry, the Interstate Commerce Commission has recognized the age factor and encouraged "the establishment of a retirement allowance to stimulate early retirement by senior employees."⁴

The problem of putting the industry's work force in age balance is the first practical factor which causes the Association to seek exclusionary relief. The second stems from the seniority system in operation.

Within the spectrum of jobs available to most of the individual rail job classifications and particularly to the operating classes such as road trainmen and yard switchmen, work requirements, including physical efforts, differ. In short, some are more taxing and demanding than others, even though the job titles and rates of pay may be identical. The seniority system permits the employees with the most years of service best selection of available jobs, and this principle repeats itself through the entire selection process. In theory and practice, advancing age diminishes the human physiological capacities, including the important factors of coordination and ability to withstand exposure to the elements, but where the seniority principle is applicable, it compensates by allowing the older worker to select the physically less taxing jobs. Application of the system, therefore, would be impaired by placing older new hires at the bottom of the seniority roster.

The work of the operating crafts, that is, the people who run the industry's trains and yard engines, is such that their know-how is acquired at a time when the body is physically best able to absorb the mistakes that inexperience spawns. Older new hires would suffer from their relative inability to withstand the lapses that inexperience breeds but for which the younger man is better prepared to withstand and learn from.

Instead of being able to select their jobs, the compensating factor of a seniority system, or have management pick the proper jobs for them, the older new hires would be saddled with the most undesirable positions, those they would be the least capable of performing. The inexorable results when a mismatch of man and job occurs on any large-scale basis would happen. More specifically, older new hires doing the same physically taxing work means reduced productivity, a less efficient over-all operation and a much higher employment turnover with all of its incidental disadvantages.

A final pragmatic consideration which the proposed legislation overlooks is the amount and kind of training which new hires must receive before they can perform the tasks for which they are hired. On the railroads many of the crafts do require training, and this is usually at railroad expense, with the employee under pay during the training period. The wherefore of maximum age requirements for every apprentice or training program is well illustrated by the law of diminishing returns. Obviously, the age of the new hire and the intensity and length of each training period determines to a great measure the return which can be expected from the training. Subjecting the railroads or any other industry, for that matter, to indiscriminate hiring regardless of age, where many of the employees require extensive training, is unfair and itself discriminatory.

Both H.R. 3651 and H.R. 5481 contain the following or similar language:

"It shall not be unlawful for an employer, employment agency or labor organization to take any action otherwise prohibited . . . where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age."

It may well be that these exculpatory provisions would allow the railroads to continue to hire younger new entrants because of the current work force age imbalance, the seniority concept, and by reason of the nature of railroad work in general. Perhaps that is the intention of the exceptions. If so, in the railroad's case at least, it is earnestly submitted that such an intention should be made

⁴ Chesapeake and Ohio—Control—Western Maryland Railway, 328 I.C.C. 684, 716 (Feb. 21, 1967).