So you hardboiled cynics may well think I'm too idealistic. And besides, I may seem to be trying to talk arbitrators out of some of the work guaranteed by their Scope Rule. As to the latter, I don't care. As to the first, you really *know* I'm not. We have plenty of evidence in this country of success in working out the kind of labor relations I have envisaged for the railroad industry. I see no actually valid reason why that industry cannot be moved off dead center.

Discussion—

DUDLEY E. WHITING
Detroit, Michigan

You know, I have frequently speculated somewhat about the proper approach of one who is to comment on a paper or discuss it. At a recent conference on arbitration at the University of Michigan, a Chicago labor lawyer was scheduled to make some comments on or discuss a speech by Ralph Seward. Well, he was tied up by some strike and couldn't get there to hear the speech, so he talked the next morning at breakfast and he said there was available to him a tape recording of the speech but he declined to listen to it because he wanted to approach the matter without prejudice.

I sort of thought that that was the perfect approach for an arbitrator to undertake, so consequently, while I had to be here and listen to Mr. Daugherty's paper, I am not completely unprejudiced, but I am attempting to be as unprejudiced as possible and as brief as possible.

There are just a few things I would like to say about the difference between arbitration, as it is conducted by the National Railroad Adjustment Board, and what we would normally find in other industries and other fields.

In the first place, normally a board of arbitration, even though tri-partite, sits in session and listens to evidence and arguments from the parties and then arrives at a decision. However, we are all familiar with some situations in which they have what they call appeal

boards, where the tri-partite form is maintained but the partisan members present the case to the neutral, who acts as chairman and makes the decision.

Well, the difference here, of course, is that on the Railroad Adjustment Board the neutral is not the chairman, he has nothing to do with procedure or what evidence can go in or what they can say. That is the function of the partisan chairman who is designated, and the neutral is merely an adjunct who sits over in the corner somewhere and listens to what they have to say.

Then, in the appeal board set-up in other industries, where the partisan people present the matter to the chairman, generally the partisans do not vote. The chairman makes the decision. But here, of course, you have to get the partisans to vote with you or you do not have an award.

I think there is another matter that is very different on the Railroad Adjustment Board, and that is the adoption of what I would consider, at least, the idea of imposing penalties for violations of contractual provisions. Most of the claims before the Adjustment Board, other than disciplinary problems, arise because an employee or a group of employees filed what they call time claims. A fellow is required to do some service requiring maybe five minutes of his time, which he thinks was not properly assigned to him, so he files a claim for a day's pay, and over the years, with and without referees, the Adjustment Board has sustained claims for a day's pay under those circumstances, if the carrier was wrong. That certainly appears to me to be a penalty, although people don't like to use that word on the Adjustment Board.

Now that, I think, contrasts with the usual thing in arbitration, of making a fellow whole for what he has lost. In other words, if a fellow was improperly assigned to work, usually you pay him the higher rate, or something of that sort. You see to it that he got what he was entitled to under the agreement, not that he got a full day's extra pay in the other classification.

Then, there is another matter that I would like to mention. That

is, Mr. Daugherty pointed out that awards are final and binding, except as to money awards, and there is a very curious bit of language in the Act about that. It provides that in those matters they can go to court about it, and the award there is not conclusive, it is only *prima facie* evidence of the facts stated therein.

Finally in connection with Mr. Daugherty's remarks about the case load and the backlog of cases on the docket, I would like to suggest that one important reason is that it does not cost anything to appeal a case to the Board so there is no incentive for the parties to do any real screening. One of the few things agreed upon by the President's Labor Management Conference after World War II was that the parties should pay for their arbitration. Perhaps the establishment of a docket fee would be wholesome.

Due to the fact that we are running overtime without premium pay I will stop without further ado.

Discussion—

PAUL N. GUTHRIE
University of North Carolina

Because of the lateness of time, I will be very brief, also because of my inherent laziness. There is the temptation to comment at some length with respect to many of the questions which might be raised regarding this whole area of consideration.

I would like to say that I am in substantial agreement with Mr. Daugherty's paper. I think he did an excellent job in laying out the general system which operates in the handling of grievance disputes in the railroad industry.

I think my differences with him would be more in the nature of emphasis than differences in fact. I would be inclined, probably, to the conclusion that there is more common law built up in the industry than Mr. Daugherty has indicated.

I would differ somewhat on such a thing as the substitution of the judgment of the Referee for that of management. I know, if you read