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# *Report* TO THE PRESIDENT

BY THE  
**EMERGENCY BOARD**

APPOINTED JULY 10, 1940  
UNDER SECTION 10 OF THE RAILWAY  
LABOR ACT

*In re*

THE RAILWAY EXPRESS AGENCY, INC., AND  
CERTAIN OF ITS EMPLOYEES REPRESENTED  
BY THE BROTHERHOOD OF RAILWAY AND  
STEAMSHIP CLERKS, FREIGHT HANDLERS,  
EXPRESS AND STATION EMPLOYEES

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## **THE RAILWAY EXPRESS AGENCY, INC., AND CERTAIN OF ITS EMPLOYEES REPRESENTED BY THE BROTH- ERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EM- PLOYEES**

By proclamation dated July 10, 1940, and issued pursuant to the authority vested in him by section 10 of the Railway Labor Act, approved May 20, 1926, the President created an Emergency Board to investigate and report its findings respecting a dispute between the Railway Express Agency, Inc., and certain of its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. After having twice approved requests on behalf of the employees that hearings, initially scheduled to start at 10 a. m., July 16, 1940, be postponed and after having met for the purpose of organization, the Board, composed of John P. Devaney, chairman, Dexter M. Keezer, and Harry A. Millis, opened hearings at 10 a. m., July 20, in Conference Room "B," Departmental Auditorium Building, Washington, D. C. Frank M. Williams was designated as secretary and reporter. The Railway Express Agency, Inc., hereafter referred to as the Agency, was represented by Albert M. Hartung, vice president, chairman, and counsel. The Employees, hereafter generally referred to as the Clerks, were represented by Frank L. Mulholland, counsel, and George M. Harrison, president, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. Hearings, characterized by a full degree of cooperation in acquainting the Board with issues involved, were held for 6 full days—July 20, 22, 23, 24, 25, and 26. Thereafter, the Board conferred with the parties in an effort to reach an agreement which would compose their differences. Unfortunately, this effort failed and consequently the Board submits the following report and findings.

### *Historical Background*

Except for one or two details, the history of railway express companies, all of which have now been unified in the Railway Express

Agency, or the history of labor organization among railway express employees, culminating in two internationals, namely, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, hereafter referred to as the Teamsters, need not concern us. From 1920, when it became a party to union agreements, down to 1937, the Agency and the predecessor company, negotiating with one or more labor organizations, kept all in mind and signed the same contracts with all. There were then two, three, or four uniform national agreements operating for the same period of time. During much of the time the Clerks and the Teamsters were competing for members and contesting for position in the labor movement. Their jurisdiction dispute was, however, adjusted through mediation in 1937. The Teamsters were to represent the employees in the vehicle division in eight specified cities (Cincinnati, Ohio; Cleveland, Ohio; Newark, N. J.; New York, N. Y.; Philadelphia, Pa.; St. Louis, Mo.; San Francisco, Calif.; and Chicago, Ill.) and in such other places as that organization had or should come to have as members a majority of the class of employees concerned. Except for such cities just named and others in which the Teamsters obtained a majority and except for such craftsmen as machinists and blacksmiths, the Brotherhood of Clerks was to be the organization of railway express employees. It was expected that neither the Clerks nor the Teamsters would "raid" the membership of the other.

This allocation of position made to Clerks and Teamsters in 1937 has affected more or less the agreements entered into subsequently. Chiefly because of somewhat different conditions to be dealt with the Clerks' and the Teamsters' agreements effective as of August 1, 1937, differed considerably in phraseology of rules and somewhat in substance also. Yet the difference in rules related to minor matters and to detail; most of the differences appear to have been designed to obtain a better adaptation to working conditions; generally speaking, the regulations relating to hours, overtime, and job protection remained common to the two agreements. As to wages, these had been locally negotiated by Teamsters, but nationally by the Clerks. This has continued to be the case.

#### DEVELOPMENT OF THE PRESENT DISPUTE

Practically all teamsters in New York City obtained the 44-hour week in 1938. The Agency drivers were an exception for they had a contract calling for a 48-hour week, effective until the beginning of 1939. When this contract expired, they too obtained a week of 44 hours. Then in 1940, influenced by the New York agreement and the general shorter-hours movement, the Brotherhood of Teamsters

presented a demand for a 42-hour week as well as a demand for a 15-percent increase in wages for all of the Agency's vehicle employees within its jurisdiction. Conferences between the Agency and the representatives of the Teamsters failed to effect an agreement. So did mediation at the hands of the National Mediation Board. Finally, it was agreed to arbitrate the differences, but this method of settlement was not actually employed, for, with arbitration in prospect, a compromise agreement was negotiated. This agreement, without change in weekly pay, substituted for the 48 the 44-hour week in the seven cities other than New York mentioned above, and in such other places as the vehicle employees might be represented by the Teamsters because a majority of them had membership in that organization.

As would be expected, and, indeed, as was expected by the Agency, the Clerks lost little time in presenting demands for the 44-hour week for all Agency employees represented by it, and for changes in some rules not bearing directly or wholly on the hours of work. The Agency, in turn, requested changes in certain rules, most of these designed to reinstitute arrangements effective prior to August 1, 1937. At the conferences held, the Agency proposed to grant the 44-hour week to vehicle employees represented by the Clerks in eight cities (Boston, Washington, Baltimore, Pittsburgh, Buffalo, Milwaukee, Detroit, and Los Angeles), but this was unacceptable to the Clerks because the Teamsters had been granted the shorter hours in all places in which it represented or would come to represent vehicle employees, and because it was of the view that there should be no "discrimination" between vehicle employees and other occupational groups. Conferences therefore failed, as did the efforts of the National Mediation Board to obtain a settlement. A suggestion that the issues should be arbitrated was accepted by the Agency but declined by the Clerks on the ground that it could not arbitrate "whether or to what extent its members should be discriminated against." A strike vote had been taken; more than 95 percent of those who voted had authorized a walk-out on call of the international officers unless conditions granted the Teamsters were extended to all employees represented by the Clerks. Hence, when its efforts failed to effect a settlement, the National Mediation Board brought the imminent strike situation to the attention of the President and the creation of this Emergency Board followed.

#### THE CLERKS' CASE FOR THE 44-HOUR WEEK SUMMARIZED

The primary demand made by the Clerks is found in proposed rules 45 and 46, which read as follows: "Day's work—Rule 45. Except as otherwise provided in rule 46, 8 consecutive hours, exclusive of the meal period, Monday to Friday, inclusive, and 4 consecutive hours on Saturday shall constitute a day's work: *Provided, however, That*

by mutual agreement between the management and the general chairman locally,  $7\frac{1}{3}$  consecutive hours, exclusive of the meal period, shall constitute a day's work.

"Intermittent service—Rule 46. At agencies where not in excess of five employees are regularly employed, whose service is intermittent, actual time on duty (the hours provided in rule 45) within a spread of 10 hours, shall constitute a day's work. Employees filling such positions shall be paid overtime for all time actually on duty or held for duty in excess of the hours provided in rule 45 from the time required to report for duty to the time of release within 10 consecutive hours and also for all time in excess of 10 consecutive hours, computed from the time first required to report until final release. Time shall be counted as continuous service in all cases where the interval of release from duty does not exceed 1 hour. \* \* \*"

The Clerks' case is rested emphatically on a charge of discrimination and a discrimination which is said to portend disaster. From 1920 the Clerks had occupied a leading position in collective bargaining; all organizations had been treated alike and had had uniform agreements. Now the Teamsters have been granted the 44-hour week where it is or may become the bargaining agency, while the company has not been willing to extend this rule to more than vehicle employees represented by the Clerks in eight specified cities. The Teamsters' agreement has an "open end" which enables it to lure the Clerks' members away from their lodges. This the Teamsters have already done, it is asserted, in a number of specific instances; the threat is a real one. The Clerks cannot be expected to accept a secondary role or to see the organization weakened by loss of membership to the Teamsters.

While it might be said that a grant of the 44-hour week to all vehicle employees represented by the Clerks would remove the present discrimination and protect the organization against loss of membership, it would not meet the situation. It is contended that the 44-hour week must be extended to all occupational groups within the Clerks' jurisdiction. With one seniority roster in all except a very few places, and except for express messengers, there is constant change in occupations. Employees bid for open positions and get them on the basis of length of service, provided they can perform the work. A platform man today may be a driver next week, or next month, or next year. The other side of the picture is that when the number of positions decreases, the senior men have the right to "bump" or to take the positions of junior men. Drivers become platform men or something else. Consequently, jobs are always more or less in a state of flux. Moreover, there are many "hyphenated" or combination jobs. Even in the larger cities, where there is the greatest specialization in jobs, "driver-clerks,"

"driver-platform men" and the like are found. In the smaller places which constitute the vast majority, combination jobs are of most frequent occurrence, the employees doing various kinds of work every day. When there is no difference in the hours of work, there is a flexible and economical situation; men "cross over" and the needs of the service are taken care of. Where, on the other hand, there are differences in hours, lines would be drawn and the mobile, desirable, and economical situation would come to an end. Even more important than this is the fact that when there is close association among the workers, as there is among drivers, platform men, clerks, and others, any discrimination is a tax on morale and good feeling. Quantity and quality of work are adversely affected. Such a costly condition cannot be afforded.

The 44-hour week is said to be in accord with social and economic trends. Some of the competitors have a shorter week than that observed by the Agency. The hours of work in the express and other service industries have, in fact, remained long as compared to the hours observed in manufacturing and other industries. Under the Fair Labor Standards Act millions of workers are already enjoying a week of 42 hours and the standard will shortly become 40.

The Clerks have had no desire to impose an unreasonable or heavy burden upon the Agency. Such a burden would not be involved by introducing the 44-hour week, for, with the adjustments possible, it need not add more than some \$2,000,000 to the annual pay roll. At the smaller offices, for example,  $7\frac{1}{3}$  hours could constitute a day's work. Where the meal period increased from an hour to an hour and a half, the availability of service would be reduced only 10 minutes, the work could be performed by the present staffs, and the wages bill would remain the same. Again, in the larger places, Saturday should not involve much trouble. It is a relatively light day and is becoming more so all the while because the shorter work week is becoming more and more prevalent. The necessary help for the afternoon could be obtained without difficulty by permitting some of the employees to take an afternoon off on another light day in the week. Though proposed rule 45 would indicate otherwise, the organization is willing to accept the flexible week necessary to make this possible. An addition of \$2,000,000 to a pay roll of around \$80,000,000 would be a slight one. Such a "burden" the Agency is well able to bear. While it is true that a decreasing part of the revenue dollar has been left for "express privileges," explained below, the financial structure and practices of the Agency obscure its profits and its ability to pay. In any event, the Agency can much better afford to meet some increase in its pay roll than to become involved in a larger bill inevitably found

in immobility of the labor force and in impaired industrial relations.

Such are the more important arguments advanced by the Clerks in support of their demand for the 44-hour week for all workers employed in the railway express industry.

#### SUMMARY OF THE AGENCY'S REPLY TO THE CLERKS' DEMANDS

The Agency contends that insofar as the incorporation of a provision for a 44-hour week in its agreement of March 1, 1940, with the Teamsters might possibly be conceived as discriminating against the Clerks' organization or its membership, such "discrimination" would be fully overcome by extending the 44-hour week to vehicle employees represented by the Clerks in eight cities having a population of 500,000 or more: namely, Boston, Buffalo, Baltimore, Detroit, Pittsburgh, Washington, Milwaukee, and Los Angeles—a group of cities characterized by the Agency as most nearly comparable to the eight large cities where the Teamsters represent the vehicle employees. The Agency emphasizes its willingness to make such an arrangement but asserts that beyond this it should not go as a matter of equity and could not go as a matter of competition and financial ability.

To refute the Clerks' contention that failure to grant the 44-hour week to all Agency employees would place its organization at a demoralizing disadvantage the Agency cites the testimony of Mr. Harrison, the president of the Clerks, that he had not heard that the Agency had granted the vehicle men in New York City, represented by the Teamsters, a 44-hour week by local agreement in May 1939, approximately 10 months before the 44-hour week was extended to all employees covered by the Teamsters' agreement. It is argued that if workers in other departments of the Agency in New York City, represented by the Clerks, had been seriously upset by the granting of a 44-hour week to vehiclemen, the president of this organization would have heard of it.

The Agency asserts that the work of vehiclemen is sufficiently differentiated from that of other groups of its employees to vitiate any contention that arrangements granting them different working conditions constitute improper discrimination. "The driver or express vehicle employee calls for and picks up express shipments at the shipper's place of business or residence. He issues the company's contract of transportation, the uniform form; he collects the charges if the shipment is prepaid, brings the shipment to the depot, unloads it and accounts for the money he has collected, and as to deliveries, performs the same work in the opposite direction. He loads the shipment onto his truck, delivers the shipment to the consignee, secures the consignee's receipt, collects charges on the collect shipment, and subsequently accounts for such collections."

Further, the Agency contends that its vehicle employees, while properly to be differentiated from other employees as a group, have such markedly different jobs and working conditions within the group that it is not necessary to grant all of them the 44-hour week to avoid improper discrimination. Of approximately 1,700 offices maintained by the Agency, it is asserted that more than 1,300 of them have five or less employees and are located in small cities and towns where longer working hours than those prevailing in large cities typically prevail.

Meeting the Clerks' argument that a majority of the qualified Agency employees in any of the smaller cities and towns now represented by the Clerks could enjoy the 44-hour week by seeking and being granted membership in the Teamsters, the Agency discounts the importance of any such development by asserting that the Teamsters is a big-city organization and is not interested in membership in small towns and villages. In this connection, the Agency disputes the accuracy of testimony introduced by the Clerks that since March 1, 1940, when the Teamsters were granted a 44-hour week, vehicle employees in a number of small cities and towns have shifted their membership from the Clerks to the Teamsters.

In contending that the times are not propitious for any general reduction in working hours, the Agency cites the emergency occasioned by the necessity to rush preparations for national defense. In such times, it asserts, the Agency, in conducting a business of extreme importance for national defense, should have no burden placed upon it which would prevent the rendering of the best possible service.

The Agency has introduced an exhibit designed to show that in proposing to extend the 44-hour week to vehicle employees represented by the Clerks in the eight large cities mentioned above, it has been willing to place itself at a marked competitive disadvantage in order to eliminate any possible basis for complaint of discrimination between the Clerks and the Teamsters. The exhibit shows that a work-week of 48 hours is typical in these cities for drivers in general trucking, less than carload lot pick-up and delivery service, department store, and parcel delivery service—forms of transportation asserted by the Agency to be its principal competitors.

The Agency contends that to comply with the Clerks' demand that it extend the 44-hour week to all employees it would place upon itself an added financial burden in excess of \$4,250,000 annually which it is unable to carry. In support of this contention the Agency emphasizes particularly the decline from a peak in 1929 in the percentage of its gross revenues paid to the railroads for "express privileges" which it asserts to be the only payment made to the railroads for handling the express traffic for which they are required to furnish facilities on almost every passenger train operating in the United States. In this



connection it is estimated that express parcels move in 10,000 trains per day.

An Agency exhibit shows that in 1929 the percentage of its revenues paid for "express privileges" was 51.51, representing a total payment of \$150,044,944.80. For 1939 the exhibit shows a payment of \$57,802,645.66—a little more than one-third of that made in 1929—and representing only 35.09 percent of the total revenue of the Agency. "Any further reduction in payments to the railroads for this transportation such as would result if the present demands of the employees now being heard here by you are granted," L. O. Head, president of the Agency, testified, "would prove disastrous for this Agency and could not but reflect unfavorably upon its employment."

The Agency also stresses the increase in the share of the "express dollar" going to pay roll and taxes since 1929. In that year, according to an Agency exhibit, 34.24 cents of every dollar received by the Agency went to pay roll, while in 1939 a total of 46.56 cents was devoted to the same purpose. Over the same period the share of the "express dollar" going to taxes is shown to have increased from 0.6 cents to 4.12 cents.

The Agency states that since March 1940, its earnings have fallen off in very marked degree in spite of what has been reputed to have been a general improvement in business. In June of this year it is testified there was what amounts to a decline of between \$600,000 and \$700,000 in the volume of the express business conducted by the Agency as compared with the same period a year ago, further emphasizing the inability of the Agency to meet the increased wage bill which the Clerks propose to submit.

As, correctly designated, an agency of 70 owning railroads rather than an independent business enterprise, the Agency does not pay these owning railroads which provide almost all of its train transportation service according to a fixed schedule of charges that is designed to provide proper compensation for these services. Rather, as indicated above, the railroads get for their services to the Agency what is left after it has paid its operating expenses, a balance embodied in the payment for "express privileges."

By this arrangement a decline in the Agency's revenues, coupled with an increase in its operating expenses, results in a decline in the payment for "express privileges." While such a decline may seem to leave the Agency relatively unscathed, it is argued that it means that the Agency becomes an increasingly unsatisfactory adjunct of the owning and directing railroads, and an increasingly unsatisfactory customer for rail transportation service. This process, it is contended, has now reached the breaking point where the Agency cannot subtract further from its payment for "express privileges" by adding to its operating cost without disastrous consequences.

When the Agency was incorporated in 1928 and a nominal capital stock of \$100,000 was distributed among 86 owning railroads, now reduced to 70, a total of \$32,000,000 of 20-year 5-percent bonds, to be retired at a rate of \$800,000 semiannually, was sold to the public to finance the Agency. By 1939 a total of \$16,000,000 of these bonds had been retired by funds collected by the Agency for services rendered and withheld from the owning railroads in making payment for "express privileges," thus constituting what the Agency regards as a loan to it by the owning railroads on which the Agency continued to pay 5-percent interest as 5-percent interest had previously been paid to the owners of the outstanding bonds.

In 1939 the \$16,000,000 of 5 percent bonds still outstanding was retired by funds acquired through the issuance of 10-year serial notes bearing an average rate of interest of about 2 percent annually. The Agency continues to withhold \$800,000 semiannually from its payment for "express privileges" to retire these notes, and as they are retired the Agency continues to pay the owning railroads 5 percent on the money so withheld or borrowed from the owning railroads. However, the Agency contends that since it is a railroad agency, the only consequence of this arrangement is that the owning railroads receive somewhat more in payment of interest on funds loaned to the Agency and somewhat less in payment for "express privileges" than would be the case if the Agency paid the owning railroads the same rate of interest as that paid to the public owners of its obligations. In any event the Agency argues the sum involved constitutes only a small fraction of the impossible increase in the wage burden which the Clerks' demands if met would impose upon it.

Such are the major arguments and counter arguments advanced by the Agency to demonstrate its inability to meet the demand of the Clerks that the 44-hour week be extended to all employees in the railway express business.

#### FINDINGS AND RECOMMENDATIONS OF THE BOARD

1. Though at the hearings much time was devoted to proposed changes in rules not directly connected with the issue of hours, the primary issue in this case is the 44-hour week. As a matter of fact other issues had scarcely been considered in the conferences held. Under the circumstances only incidental reference has been made in the above to rules other than 45 and 46. Nor will findings be made on them here. Proposed changes in rules not bearing directly on the main issue are dismissed. The parties in interest are expected to give them such consideration as they require in conformity with section 2, second, of the Railway Labor Act.

2. No blame is attached to the Agency for entering into the national agreement with the Teamsters, the chief effect of which was to grant the 44-hour week to all vehicle employees within the jurisdiction of that organization. Yet the history of collective bargaining in the express service being what it had been and the situation being what it was, a problem was created by that agreement. The problem requires constructive solution. At the very minimum, the 44-hour week must now be granted to all vehicle employees within the jurisdiction of the Clerks, without reduction in compensation. The former policy of equal treatment of comparable members of the two labor organizations is called for. No drawing of a line between the employees working in larger and employees working in smaller places, such as has been suggested by the Agency, is practicable or feasible.

3. Nor does this Board regard it as constructive or proper to draw a line between vehicle employees and platform and depot foremen, warehouse and platform clerks, warehouse and platform laborers, and others down to and including car loaders, engaged in the handling and care of incoming and outgoing shipments of express matter. With one seniority roster as the very general rule, with the occupational changes in filling positions and in making reassignments of jobs, with frequent combination jobs, and with membership carried in the same local lodges, to draw any such line between or among them is to place a tax on needed mobility, to beget the placing of limits on the kind of work that may be done by this and that occupational group, and to create dissatisfaction and a costly bad morale. It is the opinion of this Board that no such line should be drawn between occupational groups employed in handling and caring for express parcels at terminals and that platform and depot foremen, warehouse and platform clerks, warehouse and platform laborers, truckers, car loaders and all others functioning in a coordinated way in handling incoming and outgoing shipments as well as vehicle employees should be granted the 44-hour week without reduction in compensation.

4. Those employed in accounting offices and in general offices are a separable and a rather distinct group, working on receipts and way-bills, typing, filing, and doing various things done by corresponding groups employed by large business firms. A considerable proportion of them have, as a matter of fact, though not as a matter of contract right, a 44- or 45-hour week. While it might be advisable for the Agency to agree to a standard of 44 hours per week for such employees, the Board does not make a finding that this should be done, for the case would rest upon somewhat different grounds than those calling for the 44-hour week for the groups dealt with above.

5. The final employee group involved in this case is that of express messengers and train helpers and guards, whose work is on railway

trains. They are on a separate roster and to an extent have membership in special lodges. They are separable from vehicle drivers, platform men, and other employees. Of course, these are incidental facts. Very important, however, is the fact that any change in hours in their case would have a relatively heavy impact, for there is less room for control of actual hours worked. While in some cases an additional messenger could be added so as to reduce the hours actually worked from the present standard of 204 to 187 per month, in many others the effect of any reduction in the standard of hours would likely be not to change actual hours worked but to increase basic pay, the amount of overtime, and the penal rate of pay. This the Board regards as objectionable. It suggests that any hardship involved in necessary hours of work should be reflected in rate of pay, which is a matter not before the Board.

6. A reliable estimate of the cost of extending the 44-hour week to the groups of Agency employees to which the Board finds it must be extended in order to solve the problem at hand cannot be derived from the record in the case. The Agency estimated that it would cost in excess of \$4,250,000 annually to extend the 44-hour week to all of its employees and the Clerks estimated that the cost would amount in the aggregate to less than \$2,000,000 per year. But both of these estimates cover all employees, not merely those to whom the Board finds that the 44-hour week should be extended. Moreover, the cost will depend considerably upon adjustments made.

It is apparent, however, that the extension of the 44-hour week to the groups of employees we have designated will add materially to the operating costs of the Agency. But there is nothing in the record which demonstrates that the Agency cannot meet this cost while there is much in the record which persuasively suggests that it would be a penny-wise and pound-foolish policy not to meet it. This assertion is made on the assumption that the management and employees would cooperate to the fullest extent possible in extending the 44-hour week with a maximum of economy and efficiency, and the finding that it should be extended as indicated is made with the expectation that there will be such cooperation.

To secure efficiency and economy in the extension of the 44-hour week the rules governing its application must be flexible. For example, in intermittent service the rules should provide for the working of the 8-hour day within a spread of 12 hours, and the working of a 4-hour half day within a spread of 6 hours. Also, if because of the flow of express traffic within the week it is more economical to have the 4-hour half day worked on some other day than Saturday it should be so arranged. Further, if the installation of the 44-hour week would be most economical by having it worked in 6 days of  $7\frac{1}{3}$  hours each,

it should be so adjusted; and the length of the meal period within the working day should be adjusted to secure the maximum economy and least sacrifice of service.

If the procedure of installation outlined is followed in a spirit of mutual good will, we believe that the extension of the 44-hour week to the Agency employees designated will result in the necessity of engaging far fewer employees and paying far less overtime than the Agency fears. Regardless, however, of operating results which cannot be fully foreseen, the Board feels that the Agency has incurred a clear obligation to make the extension of the 44-hour week as outlined. In terms of prevailing national policy and general practice the obligation imposed is not excessive.

JOHN P. DEVANEY,  
*Chairman.*

DEXTER M. KEEZER.

HARRY A. MILLIS.



