
Report TO THE PRESIDENT

BY THE EMERGENCY BOARD

APPOINTED UNDER THE PROVISIONS OF THE
RAILWAY LABOR ACT

*To Investigate and Report
in Respect to the Dispute Between*

THE ATLANTA, BIRMINGHAM & COAST RAILROAD CO.
AND CERTAIN OF ITS EMPLOYEES REPRESENTED BY
THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND
ENGINEMEN AND THE BROTHERHOOD OF
RAILROAD TRAINMEN

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THE ATLANTA, BIRMINGHAM & COAST RAILROAD CO. AND CERTAIN OF ITS EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN AND THE BROTHERHOOD OF RAILROAD TRAINMEN

The Emergency Board appointed by the President pursuant to the provisions of section 10 of the Railway Labor Act and in accordance with his Executive Proclamation of May 16, 1941, to investigate and report respecting a dispute between the Atlanta, Birmingham & Coast Railroad Co. (hereinafter sometimes referred to as the Carrier) and certain of its employees, represented by the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen, met in room 200 of the Piedmont Hotel in Atlanta, Ga., on May 21, 1941. The Board, composed of George W. Stocking, who was elected chairman, the Honorable Huston Thompson, and Brigadier General H. S. Hawkins, confirmed the appointment of Frank M. Williams & Co. as official reporters and designated E. E. Moeckel of this firm as secretary to the Board. The Carrier was represented by Frank C. Tindall and Furman Smith as counsel and the employees by C. K. Keenen, vice president, Brotherhood of Locomotive Firemen and Enginemen, and E. E. Oster, vice president, Brotherhood of Railroad Trainmen.

Public hearings were held from May 21 to May 24, inclusive. The record of the public hearings, consisting of 583 pages of testimony and 26 exhibits, are hereby made a part of this report. After the close of public hearings, the Board, in executive sessions, held conferences from May 26 through May 30, with representatives of the Carrier and of the Brotherhoods in an effort to adjust the matters in dispute. As a result of these conferences, an agreement on all matters in dispute was effected between the parties in controversy. Although the danger of interruption of traffic has been averted by the settlement of this dispute, the Board believes that the public inter-

est will be served by a detailed report on the circumstances leading to the controversy, on the position taken by the respective parties with regard to it and on the manner in which it was settled.

THE QUESTIONS IN DISPUTE

The controversy before the Board was represented by certain provisions of proposed agreements submitted by the respective Brotherhoods on behalf of the employees concerned, to the Carrier, which had been the subject of negotiations for some months. In the course of these negotiations, agreement had been reached on most of the proposals submitted by the Brotherhoods. Those in dispute when hearings began are represented by article 1; paragraphs (a), (b), (c), and (d) of article 4; paragraph (g) of article 25; paragraph (b) of article 27; paragraph (a) of article 31 of the proposed agreement between the Carrier and its conductors, trainmen, and yardmen employees (Employees' Exhibit C); and article 1; paragraphs (a) and (c) of article 2; section 3 of article 9; section 4, paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) of article 9; paragraphs (g), (h), (i), (j), (k), and (l) of article 12; paragraphs (a) and (e) of article 13; paragraphs (a), (c), and (p) of article 16; and paragraph (ff) of article 20 of the proposed agreement between the Carrier and its enginemen employees (Employees' Exhibit B).

The more important of these paragraphs related to rates of pay, promotions, rights of seniority, limitations on mileage, starting time for yardmen, furnishing hostlers and hostlers' helpers, responsibility of hostlers for engines, and the use of engineers and firemen on other than steam locomotives should they be installed. No serious obstacle was encountered in reaching a settlement on any of these matters save those relating to rates of pay. These represented the heart of the controversy. The more important details of the wage question are set forth in article 1 and paragraphs (a), (b), and (c) of article 4 of Employees' Exhibit C, and in article 1 of Employees' Exhibit B. Basically, the employees' proposals regarding rates of pay constituted a request for the establishment by the Carrier of so-called standard rates of pay (that is, the rates of pay which prevail under contracts between the several railway brotherhoods and most of the class I railways of the country) for engineers, firemen, hostlers, hostlers' helpers, conductors, trainmen and yardmen. The wages of 325 employees were immediately involved. Total number of employees on the Carrier's pay roll for the first quarter of 1941 was 1702.

In order to understand the significance of the employees' wage proposals, it is necessary to review briefly the history of the Atlanta, Birmingham & Coast Railroad, the scope of its operations, its relation to the parent company, the Atlantic Coast Line Railroad Co.,

and the background and course of the negotiations which culminated in the dispute before this Emergency Board.

HISTORY OF THE ATLANTA, BIRMINGHAM & COAST RAILROAD CO.

The Atlanta, Birmingham & Coast Railroad Co. is a successor to the Atlanta, Birmingham & Atlantic Railway Co. About 1906 the Atlanta, Birmingham & Atlantic Railroad Co. acquired five so-called lumber roads, operating in southeastern Georgia, which had previously been consolidated as the Atlantic & Birmingham Railroad Co., and undertook to connect these roads with Atlanta, Ga., and Birmingham, Ala., by construction of a line to Manchester, Ga., and a line from Manchester to Atlanta and Birmingham. With the consummation of this construction program in 1909, the Carrier's present system, consisting of 637 miles of main line trackage extending from Atlanta, Ga., and Birmingham, Ala., through Manchester, Ga., to Brunswick, Ga., on the coast, and to Thomasville and Waycross in southern Georgia, where the lines connect with the system of the Atlantic Coast Line Railroad Co., was completed.

Before this construction program was completed, the Atlanta, Birmingham & Atlantic Railroad Co. went into receivership and remained in receivership until June 1, 1916, when a new company was organized, the Atlanta, Birmingham & Atlantic Railway Co. The capital structure of the new company included an issue of 15-year income bonds in the amount of \$5,250,000 floated to secure funds to pay the debts of the receivership; \$825,000 first and refunding mortgage bonds, issued as collateral for certain bank loans; \$4,090,000 of underlying Atlanta & Birmingham Railroad Co. bonds previously outstanding, and \$30,000,000 of common stock.

The reorganized company, the Atlanta, Birmingham & Atlantic Railway Co. operated the properties until they were taken over by the Federal Government on June 1, 1918, during the World War. The properties were returned to the owning company on March 1, 1920, under a Government guarantee with regard to earnings for a 6 months' period. The company concluded its operations for the year 1920 with a deficit of \$1,352,588. The Government guarantee resulted in a reimbursement to the company of \$1,217,453. The operating loss of 1920 was continued into 1921. By March of the latter year the company had cash sufficient only for 1 month's pay roll and was unable to meet its fixed charges. The road was once more placed in the hands of a receiver. During the period of Government operation, wages of the employees of the Atlanta, Birmingham & Atlantic Railway Co. had been raised to the so-called standard rates under contracts between the company and some 18 or 20 national unions. When the road was placed in the hands of a

receiver, the receiver, under orders of the United States District Court for the Northern District of Georgia, reduced all wage rates by an amount equal to one-half the increase which had been granted during the period of Federal control.

The road remained in receivership until June 1, 1927, when it was reorganized under its present corporate structure as the Atlanta, Birmingham & Coast Railroad Co. In the reorganization, the Atlantic Coast Line Railroad Co. acquired ownership of the Atlanta, Birmingham & Coast Railroad through purchase of all of its 150,000 shares of newly issued common stock. This stock has a book value of \$4,284,413 which represents the amount advanced to the road by the Atlantic Coast Line Railroad Co. in the process of the road's reorganization. All bonded indebtedness of the road was wiped out in the reorganization and bond holders accepted preferred stock in the amount of 51,803 shares. The bonds were retired on a basis of \$60 of preferred stock for \$100 of bonds. The preferred stock has a par value of \$100 and provides for dividends at the rate of 5 percent per annum. The preferred stock is guaranteed both as to dividends and principal by the Atlantic Coast Line Railroad Co. While the Atlantic Coast Line Railroad Co. is sole owner of the common stock of the Atlanta, Birmingham & Coast Railroad Co., the latter is operated as a separate corporate entity.

THE BACKGROUND OF THE PRESENT CONTROVERSY

As previously stated, when the Atlanta, Birmingham & Atlantic Railway Co. went into receivership in March 1921 under a court order, the receiver reduced the wage rates of all employees by one-half of the increase that had been granted during the period of Federal operation. In protest, some 1,500 employees of the company went on strike. The strike resulted in complete cessation of operations by the railroad for some 10 days, but the strike was eventually broken and as new employees were hired, the railroad resumed operations. Practically all of the striking employees were replaced by new employees. Although some services were permanently discontinued following the strike, within a couple of months the railroad was operating with "reasonable service." Subsequent to the strike, the employees of the Carrier were organized into a company union.

In the period between the receivership and the present controversy, there appears to have been considerable unrest among certain of the employees of the Carrier. The employees of the Carrier did not share in the several wage increases which have been granted to railway employees since the depression of 1920-21. Wages were reduced by 10 percent, however, by the Carrier on its properties without protest

from the employees during a 2-year period beginning in 1932, in conformity with the wage reductions agreed upon by representatives of the several national brotherhoods and the railroads of the country with which they had contracts. The unrest among the employees on the Carrier's property was reflected in the appearance of rival local unions claiming jurisdiction over the same groups of employees. Such a controversy culminated in a suit brought by the Railway Employees' Cooperative Association against the Carrier, seeking an injunction against the abrogation of a contract between the Carrier and the Association following recognition by the Carrier of a rival union which had been organized on the properties and in the organization of which certain executives of the Carrier had interested themselves (23 Fed. Supp. 510).

This unrest culminated in an investigation by the National Mediation Board and in the conduct of an election between January 16 and 25, 1938, to determine the choice of the conductors, road trainmen, yardmen, and switchmen, of representatives for collective bargaining, and an election between April 5 and 15, 1940, to determine the choice of the locomotive engineers, firemen, hostlers and hostlers' helpers, of representatives for collective bargaining. As a result of the first election, the National Mediation Board certified the Brotherhood of Railroad Trainmen as the representative of the trainmen employees on February 1, 1938; and as a result of the second election, the Board certified the Brotherhood of Locomotive Firemen and Enginemen as the representative of the enginemen employees on April 30, 1940.

On June 9, 1938, a local committee of the employees, represented by the Brotherhood of Railroad Trainmen, submitted to the Carrier a proposed agreement covering wages and working conditions for trainmen employees. Negotiations between the Carrier and the Committee were long and drawn out, continuing at intervals between June 9, 1938, and March 15, 1941. During the course of these negotiations, the local committee was assisted by the national organization. Meanwhile, on May 29, 1940, negotiations with the Carrier for an agreement covering wages and working conditions affecting engineers, firemen, hostlers and hostlers' helpers, had been instituted by a local committee representing these employees. In the course of these negotiations, the employees likewise requested the assistance of their national organization.

Although much progress was made in these negotiations and agreement reached on many points, no agreement was reached on certain fundamental matters, the most important of which was the question of wage rates. The services of the National Mediation Board were therefore invoked. The Mediation Board, unable to reconcile the

differences, formally requested the Brotherhoods and the Carrier to submit the matter in controversy to a board of arbitration to be established in accordance with the provisions of the Railway Labor Act. The Brotherhoods accepted this proposal. The Carrier rejected it. Subsequently, a strike ballot was taken by the Brotherhoods and thereafter, in accordance with the result of the ballot, Friday, May 16, 1941, was set as the effective date for the strike. The strike was averted by the appointment of this Emergency Board.

THE POSITION OF THE CARRIER

In refusing arbitration as a means of settling this controversy, the Carrier pleaded financial inability. Briefly, the Carrier stated its position as follows:

Throughout its entire corporate history the Carrier has operated at a substantial loss. The wage demands of the Brotherhood would involve an annual increase in the Carrier's pay roll of \$280,800. This represents an increase of 45 percent in the pay roll of the employees affected. Should the demands of the Brotherhoods be granted, the Carrier would be under obligation to increase the wages of 781 other employees not parties to this controversy to whom the wage reduction of 1921 likewise applied. To meet this additional wage increase would necessitate an additional increase in the Carrier's annual pay roll of \$373,200, or a total increase of \$654,000 in the Carrier's annual pay roll. The Carrier has no funds with which to meet such expense and no sources from which to get them. For the Carrier to agree to arbitration would be to bind itself to accept the award of an arbitration board. The financial position of the Carrier would make it impossible to comply with any award involving a wage increase. The Carrier would not be justified in assuming an obligation it could not fulfill. Any substantial wage increase would mean the abandonment of the Carrier's operations. To such a proposal the Carrier could not agree.

In support of its position as above stated, the Carrier introduced extensive evidence revealing its financial condition.

While the Carrier has shown a net revenue from operations in every year since 1927, with the exception of 1930, 1931, 1932, and 1934, in no year has it had adequate funds from net revenue to meet its taxes and its net balance on equipment rentals. Its taxes have been cared for by the purchase of the State *fis* (tax liens) by local banks, to which 4 percent interest is paid on the face value of the lien. Not only has the Carrier been unable to meet its tax obligations promptly, but it has had to postpone numerous other obligations from time to time. The Carrier's accumulated net deficits for the entire period of 1927-40 was \$3,367,150. This was represented on the

books of the Carrier primarily by accrued depreciation in the amount of \$1,794,862. Tax liens held by banks represented \$320,202. Other unpaid taxes, \$161,505. Loss from retirement of road and equipment property, and a decrease in materials and supplies, and miscellaneous debits, accounted for the balance.

THE POSITION OF THE EMPLOYEES

The Brotherhoods did not deny the difficult financial straits in which the Carrier has found itself. They contended, however, that ability to pay is not an appropriate criterion by which to determine wage rates. They pointed out that the Carrier, financially embarrassed though it is, receives no favors in the market by reason of this fact, in its purchase of materials, supplies and other essentials; that it, like the financially prosperous railways, must pay the going market price for these items. The Brotherhoods further pointed out that the character of the services rendered by the Carrier's employees is the same as that rendered upon other railway lines on which standard wage rates prevail, that the Carrier's employees are equally efficient and render equally satisfactory service. The Brotherhoods cited the particular case of the "Dixie Flagler," a modern streamlined passenger train operating between Chicago, Illinois, and Florida, which handles thousands of passengers per month. On the Chicago-Florida trip by this train, some five train crews are utilized. All of these, with the exception of the crews on that segment of the road represented by the operations of the Atlanta, Birmingham & Coast Railroad, receive standard rates of pay. The Brotherhoods contended that with a single other exception all class I carriers in the southeastern area pay standard wages and that the lower wages paid on the Atlanta, Birmingham & Coast Railroad are discriminatory and unfair.

In rejecting the principle of ability to pay as a criterion for determining wage rates, the Brotherhoods cited numerous cases in which this principle has been rejected by the courts and by arbitration and emergency boards.

While the Brotherhoods contended that it is the Carrier's responsibility to find ways and means to meet the proposed wage increase, they alleged that the Carrier's ability to pay has been diminished by an unfair distribution of revenues between the Carrier and its parent, the Atlantic Coast Line Railroad Co. In answer to this allegation, the Carrier pointed out that the present distribution of revenues has an historical basis, that it originated as a result of contract prior to the acquisition of the Atlanta, Birmingham & Coast Railroad by the Atlantic Coast Line, and that it is justified on a basis of competitive conditions prevailing in this area.

THE RELATIONSHIP BETWEEN THE ATLANTA, BIRMINGHAM & COAST RAILROAD CO. AND THE ATLANTIC COAST LINE RAILROAD CO.

Without passing judgment upon the merits of the positions taken by the Carrier and the Brotherhoods with regard to the distribution of revenue between the Carrier and its parent company, the Board wishes to develop somewhat further the relationship existing between these two railroads. As previously indicated, the Atlantic Coast Line Railroad Co. has been sole owner of the common stock of the Atlanta, Birmingham & Coast Railroad Co. since the reorganization of the latter at the close of 1926. The Atlantic Coast Line guarantees the preferred stock of the Atlanta, Birmingham & Atlantic Railroad Co., both as to principal and dividends, and has regularly paid annual dividends on the stock. The chairman of the Board of Directors and the president of the Atlantic Coast Line Railroad Co. are members of the board of directors of the Atlanta, Birmingham & Coast Railroad Co.

The Atlantic Coast Line operates some 5,000 miles of track, roughly paralleling the Atlantic Coast from Richmond, Va., to Florida. It reaches Washington, D. C., over the lines of the Richmond, Fredericksburg & Potomac, and it operates an extensive railway network throughout Florida. From Valdosta, in southern Georgia, its line extends west and north to Montgomery, Ala. Through the lines of numerous subsidiaries it taps the interior of the coastal states from North Carolina to Alabama. Important among its subsidiaries is the Atlanta, Birmingham & Coast Railroad Co., which connects the Atlantic Coast Line Railroad Co. with Atlanta and Birmingham. While the operations of the latter are conducted as a separate corporate entity, the close physical relationship between the two roads is reflected in the fact that approximately 18 percent of the total tonnage handled by the Atlanta, Birmingham & Coast Railroad is delivered to the Atlantic Coast Line, and another 18 percent of the Atlanta, Birmingham & Coast Railroad's total tonnage is received from the Atlantic Coast Line Railroad Co. Of the tonnage originating with the Atlanta, Birmingham & Atlantic Railroad Co., over 20 percent is delivered to the Atlantic Coast Line Railroad Co. In the plan for consolidating the railroads of the country into a limited number of systems, as promulgated by the Interstate Commerce Commission on December 9, 1929, under the Transportation Act prior to its amendment in 1940, the Atlanta, Birmingham & Coast Railroad was assigned to the Atlantic Coast Line System.

The present operations of the Atlantic Coast Line, as indicated by the above brief summary, are extensive in character. With over 13,000 employees, its annual pay rolls are in excess of \$23,000,000. Its financial position is reflected in the fact that, save for 1938, it has

shown a net revenue, after the payment of all fixed charges, in every year since 1935. A considerable portion of its income comes from stock owned in the Louisville & Nashville Railroad. The aggregate net income of the Atlantic Coast Line Railroad Co. during the past 5 years has been in excess of \$5,000,000. It should be noted, however, that the Atlantic Coast Line is under no legal obligation to make good an operating deficit of the Atlanta, Birmingham & Coast Railroad Co., although as previously explained, it is guarantor of the preferred stock of the subsidiary company.

CURRENT INCOME OF THE ATLANTA, BIRMINGHAM & COAST RAILROAD

While the future earnings of the Atlanta, Birmingham & Coast Railroad are conjectural, it should be observed that the recent upsurge in business activity since the national defense program has gotten under way, has been accompanied by a considerable increase in ton-mileage handled by the Atlanta, Birmingham & Coast Railroad. During the first 4 months of 1941, this increase amounted to approximately 30 percent over the corresponding period of 1940. Despite substantial increases in operating expenses for maintenance of way and structures, maintenance of equipment, and in expenses for transportation, the first 3 months of 1941 showed an increase of over 80 percent in the Carrier's net revenue from railway operations. After deductions, for tax accruals, equipment rents, and joint facility rents, the Carrier showed a net railway operating income of \$17,228. This amount would have been available to meet any expenses which might have been encountered. This trend may, or may not, continue.

In the past, the Carrier has customarily shown greater net revenues from railway operations during the first quarter of the year than during the succeeding quarters. It should be observed, however, that two defense plants, one for the manufacture of gun powder and the other for the manufacture of bags and for the bagging of powder, are now under construction in proximity to the lines of the Carrier and will be served in part by the carrier. There has likewise been an increase in steel shipments from Birmingham to coastal destinations for export. Such developments augur, although they do not make certain, the continuation for the immediate future of the upward trend in operating revenues of the Carrier.

SETTLEMENT OF THE CONTROVERSY

Although the Carrier had initially taken the position that it could not make any wage increase, in the course of negotiations under the Board's supervision an agreement was eventually effected between the Carrier and the Brotherhoods under the terms of which the Car-

rier agreed to inaugurate a wage increase which for the 325 employees immediately affected averages approximately 17½ percent. This brings the wages of all employees involved up to 81 percent of the standard wage. This settlement represents a compromise in the original position as taken by the Carrier and by the Brotherhoods. In reaching it, a spirit of mutual consideration and good will was manifested by both parties. While the Carrier's financial position is still uncertain, there is reason to believe that as long as the present accelerated state of business activity is maintained, the Carrier will be able to continue to pay the wages agreed upon. There is likewise the alternative, should circumstances demand it and the parent company choose to exercise it, that the parent company lend financial assistance to the subsidiary, or that it effect a redistribution of revenue in favor of the subsidiary on traffic handled jointly.

THE BASIC ISSUE OF THE CONTROVERSY

In the light of all the facts in this case, the Board does not regard the basic issue to have been whether the wage demands of the Brotherhoods should have been granted or denied. That question has now been disposed of. A more fundamental issue was raised by the controversy, namely, is the demand for the payment of "standard" wages by a carrier in the financial condition of the Atlanta, Birmingham & Coast Railroad a matter which may be appropriately submitted to the determination of an arbitration board established in accordance with the provisions of the Railway Labor Act. This act does not require compulsory arbitration. It does, however, place an obligation upon both carriers and employees "to exert every reasonable effort to settle all disputes" in order "to avoid any interruption to commerce." The act provides for an orderly method of settling disputes. It contemplates a definite step by step procedure, through negotiation, mediation and voluntary arbitration. When negotiation and mediation fail to achieve a settlement and arbitration is rejected, if an emergency is created which threatens to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation services, the President may create an emergency board to investigate and report to him its findings. It should be obvious to those familiar with industrial relations, however, that if the process of arbitration is to be circumvented continuously by a refusal of one or the other of the parties to accept it, the machinery of the act will eventually become ineffective. The success or failure of the act depends upon the use to which it is put. The responsibility for its proper use rests upon both labor and management. The present act represents the culmination of a long and useful experience in the settlement of labor disputes. Because earlier

measures had not succeeded in avoiding strife, newer devices were formulated. In the formulation of the present machinery, both labor and management played an important role. It is in a sense their machinery and it represents their accumulated and joint wisdom in a search for industrial peace. For either management or labor to turn its back upon a particular step in the machinery provided for the settlement of disputes because it feels that in a particular controversy it stands to lose, is to jeopardize the entire machinery, the beneficial character of which to labor, to management and to the public has been generally recognized.

The potential usefulness of this machinery and the importance of using it would appear to be greatly enhanced in this hour of emergency. The spirit of the President's injunction to labor and capital in his speech of May 27, made in connection with this declaration of an unlimited national emergency, is peculiarly pertinent in this regard: "A nation-wide machinery for conciliation and mediation of industrial disputes has been set up. That machinery must be used promptly and without stoppage of work. Collective bargaining will be retained, but the American people expect that the impartial recommendations of our Government services will be followed both by capital and by labor."

Respectfully submitted.

(s) GEORGE W. STOCKING, *Chairman*.

(s) HUSTON THOMPSON.

(s) H. S. HAWKINS.

WASHINGTON, D. C., *June 6, 1941.*

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