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Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

**Appointed December 15, 1944, under the provisions of
the Railway Labor Act**

**To investigate and report in respect to the
dispute involving the Seaboard Air Line
Railway Company and certain of its em-
ployees represented by the Brother-
hood of Locomotive Firemen and
Enginemen and the Brother-
hood of Locomotive Engineers**

JANUARY 17, 1945

**UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1945**

WASHINGTON, D. C.,
January 17, 1945.

Honorable FRANKLIN D. ROOSEVELT,
The White House,
Washington, D. C.

DEAR MR. PRESIDENT: In response to your creation of an Emergency Board to investigate and report respecting the dispute involving the Seaboard Air Line Railway Company and the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, we beg to present herewith our Report.

The Members of the Board await your further pleasure.
Respectfully submitted.

[Signed] HUSTON THOMPSON, *Chairman.*

[Signed] DAVID J. LEWIS, *Member.*

[Signed] WILLIAM H. TSCHAPPAT, *Member.*

**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 involving the Seaboard Air Line Railway Company and certain of its employees represented by the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers

The Emergency Board appointed by you on December 15, 1944, in accordance with the provisions of the Railway Labor Act, has the honor to submit herewith its Report with Findings and Recommendations, on the pending labor dispute between the Seaboard Air Line Railway Company (hereinafter called the Carrier) and the Brotherhood of Locomotive Firemen and Enginemen (hereinafter called the Firemen's Brotherhood) and the Brotherhood of Locomotive Engineers, Intervenor (hereinafter called the Engineers' Brotherhood).

The Board, composed of Huston Thompson, who was elected chairman, the Honorable David J. Lewis, and Major General William H. Tschappat, confirmed the appointment of Frank M. Williams & Company as official reporters. The Carrier was represented by Mr. Thomas L. Preston, its general solicitor, Mr. C. T. Abeles, senior general attorney, and Mr. J. C. Wroton, general manager. The Engineers' Brotherhood was represented by Mr. Harold N. McLaughlin, attorney, Mr. George W. Laughlin, assistant grand chief, and Mr. G. W. Sanders, chairman of the General Committee of Adjustment on the Seaboard Air Line Railway. The Firemen's Brotherhood was not represented in person by anyone at the formal hearings, having filed a letter containing a statement of its position, but declining to appear by personal representation.

The dispute originated between the Firemen's Brotherhood and the Carrier. Eventually, because of a threatened strike by the Firemen's Brotherhood, the matter reached the National Mediation Board and the Engineers' Brotherhood was made a party to the mediation.

Mediation having failed and the Firemen's Brotherhood having voted to strike, you requested this Board by letter dated

December 14, 1944, to "organize and investigate promptly the facts as to such dispute and on the basis of facts developed make every effort to adjust the dispute and make a report thereon" to you within thirty days from December 14, 1944.

Pursuant to your letter the Board organized and held formal hearings, including the presentation of testimony, in the South Agriculture Building, Washington, D. C., on December 18, 19 and 20, 1944. Mr. D. B. Robertson, President of the Firemen's Brotherhood, had delivered to the members of the Board individually, on December 18, 1944, the aforesaid letter signed by him, stating his position and that of his Brotherhood and adding that none of its officers contemplated appearing in person at the hearings. This letter was read into the record; thus no witnesses or any testimony of the Firemen's Brotherhood was presented for the record.

The Board, through its chairman, wired Mr. Robertson, requesting him or his representatives to appear and present any evidence they desired. In response, Mr. Robertson on December 27, 1944, wired that he would be glad to appear informally in conference with the Board and the other parties to the dispute. Arrangements were then made for the presence of the other parties to the dispute and finally on January 9, 10 and 11, 1945, the Board held informal meetings at the Hamilton Hotel, Washington, D. C., at which the Carrier was represented by the same representatives who were present at the formal meetings, the Engineers' Brotherhood was represented by Mr. A. Johnston, its Grand Chief Engineer, in addition to the representatives who were present at the formal meetings, and the Firemen's Brotherhood was represented by its President, Mr. D. B. Robertson, its Attorney Mr. Harold Heiss, and the Chairman of the General Grievance Committee on the Seaboard Air Line Railway, Mr. W. E. Mitchell. Although at these informal meetings the Board earnestly sought to adjust the differences of the parties, it was not successful in securing a formal agreement between the parties. However, it explored these differences thoroughly and improved its understanding of the practical working of the two Brotherhoods with each other and with the Carrier, and suggested various methods of solution.

EVENTS LEADING UP TO THIS CASE

The present dispute grew out of the discharge by the Carrier of an engineer, because of a head-on collision at Charleston, South Carolina, in January, 1943. After an investigation the

engineer was found guilty of violating the Company's rules. He was dismissed, and his name was removed from the Company's roster. Thus he was deprived of his seniority rights.

Approximately eight months after the dismissal, the local chairman of the Firemen's Brotherhood interceded, verbally and by letter, with the Carrier, to reinstate the engineer with full seniority rights. In the meantime, after his discharge, engineers below this employee were moved up in their seniority rights, some of them given different runs and their positions changed materially.

The Carrier, about to reinstate the engineer, asked for "concurrency" by the Engineers' Brotherhood. The "concurrency" was granted and the engineer restored to his seniority rights.

Subsequent thereto, on November 17, 1943, and when no reinstatement case existed, the Firemen's Brotherhood challenged the right of the Carrier as a matter of principle to request "concurrency" of the Engineers' Brotherhood and requested a statement of the position of the Carrier. To this the Carrier replied by letter, hereto attached, dated November 30, 1943, signed by J. C. Wroton, general manager, that in clemency cases there must be a "concurrency" of the Engineers' Brotherhood before reinstatement of the employee.

Eventually, because of a threatened strike by the Firemen's Brotherhood, the Carrier asked the National Mediation Board to mediate, and the two Brotherhoods and the Carrier appeared before that Board.

The National Mediation Board, having failed to secure an agreement between the Carrier, Engineers and Firemen settling the dispute, thereupon terminated its services. Whereupon, the Firemen's Brotherhood, having previously on December 10, 1943, spread a strike ballot, set the effective date of the strike as of December 15, 1944, which fact having been reported to the President, this Emergency Board was appointed by his proclamation.

THE QUESTION IN DISPUTE

The issue may be presented by the following question: If an engineer on the roster of the Carrier has been regularly discharged by the Carrier, for cause, without contest by either Brotherhood; and if approximately eight months later the Firemen's Brotherhood, representing him, applies to the Carrier for reinstatement to his seniority standing, and if the Carrier, about to restore the employee, requests "concurrency" of the Engineers'

Brotherhood as a prerequisite to reinstatement, is this action on the part of the Carrier a violation of the Firemen's Schedule (contract) and of the Railway Labor Act?

The employee in question having been restored to his seniority rights, with the "concurrence" of the Engineers' Brotherhood, the dispute over this particular individual employee gave way to the simple question of whether in any clemency case this particular Carrier has the right to request and obtain the "concurrence" of the Engineers' Brotherhood before reinstatement of the employee, when the employee was already represented by the Firemen's Brotherhood.

THE POSITION OF THE CARRIER

The Carrier's position is clearly outlined in Mr. Wroton's letter referred to above, where it is indicated that the reinstatement of dismissed engineers will affect the engineer seniority of others. The management has, up to the present, conceived itself to be bound to the existing practice by the terms of the pertinent bargaining agreements which it understands are binding upon it under the terms of the Railway Labor Act.

However, the position of the Carrier in this dispute is now one of a neutral. It has stated on the record that it "would be content with any solution which might have been arrived at through agreement between the organizations or any decision of the matter which might be made" by this Emergency Board.

THE POSITION OF THE FIREMEN'S BROTHERHOOD

The position of the Firemen's Brotherhood is substantially as set forth in the letter of Mr. D. B. Robertson. It maintains that there never has been a valid practice on the Carrier's road that "concurrence" of the Engineers' Committee be required by the Carrier in the case of a discharged engineer seeking clemency; that there is no such rule or provision in the Schedule (contract) of the Engineers' Brotherhood, nor any reference to such a requirement in the Railway Labor Act; that where the Firemen's Brotherhood is representing an employee, in a clemency case, who once was on the roster and had seniority rights in the Engineers' Brotherhood, the Firemen's Brotherhood has the sole right to represent the employee until his reinstatement and the Carrier has no right to prevent or to delay the reinstatement pending "concurrence" of the Engineer's Committee.

THE POSITION OF THE ENGINEERS' BROTHERHOOD, INTERVENOR

The position of the Engineers' Brotherhood, the Intervenor, is that when an employee having been on the Engineers' roster is discharged, and is seeking reinstatement to his seniority privileges on the Engineers' roster, as a matter of clemency, under the Schedule (contract) of the Engineers' craft, the interpretation of that Schedule shall be made by the Engineers' Brotherhood, even though the individual seeking clemency has selected the Firemen's Brotherhood to represent him. The Engineers' Brotherhood also maintains that there has been a practice for a period of over twenty years on this Carrier of obtaining "concurrency" of the Engineers' Brotherhood as a prerequisite to reinstatement, because the seniority rights of all engineers below the one being reinstated are affected by his reinstatement and therefore the Engineers' Brotherhood is and has a right to be consulted and to approve of the reinstatement.

It further maintains that if it were to disregard this established practice on the Carrier's road in interpreting the applicant's position, it would be doing violence to the Engineers' Schedule (contract) as well as to the Railway Labor Act.

FINDINGS

The Board finds:

(1) That there exists with respect to this Carrier and its firemen and engineers, a system of seniority employee rights under which promotions are made of its firemen and engineers according to their priority of employment. In locomotive employment with this Carrier, as with other Carriers, there are constant changes in the duties and status of the engine employees, as determined by such seniority rosters, with a constant ebb and flow between the craft of engineers and firemen. The number of engineers in this Carrier's service varies with fluctuations in volume of its traffic, seasonal and otherwise, and the number of firemen in its service varies for the same reasons. When its volume of business increases, furloughed engineers and qualified firemen are called to service as engineers. When, under such seniority system traffic declines, engineers are demoted and almost all of them displace firemen; firemen so displaced in turn displace other firemen their juniors on the firemen's seniority list and firemen with the least seniority are released from work.

(2) That in connection with such seniority rights there has been for the last twenty years an unwritten rule or practice on this Carrier road that where an engineer employee has been discharged for cause and seeks reinstatement as a matter of clemency, the Carrier has asked for "concurrence" of the Engineers' Committee as a prerequisite to reinstatement.

(3) That the issue here raised is one confined solely to a clemency case wherein the employee, an engineer, has been discharged for cause and seeks reinstatement and previous seniority rights on the Engineers' roster of the Carrier, as a matter of clemency.

(4) That there is, so far as we have been able to ascertain, no precedent in any decision of any court or governmental body that is applicable to a clemency dispute such as here involved, and hence this is a case of first impression.

(5) That the rule of requiring "concurrence" as a prerequisite to reinstatement is not uniform on the several railroads of the United States.

(6) That as in the present dispute, when an engineer is discharged for cause, and seeks reinstatement as a matter of clemency, the vested interests of all those on the Engineer roster below this employee and on the Firemen's roster are affected by the action of reinstatement, and hence there is a joint interest of the two crafts in any such reinstatement.

(7) That the solution to the problem presented here obviously lies in joint action by the two Brotherhoods without a right of veto by either Brotherhood.

RECOMMENDATION

Having in mind the importance of preserving harmonious relations among all parties concerned with locomotive operation on the Carrier, and in view of the facts and findings presented above, the Board recommends:

That the practice of the management in requiring "concurrence" of the Engineers' Committee, before reinstatement of dismissed engineers, be modified by the following provision to be placed in the Schedules (contracts) between the Carrier and the Engineers, and the Carrier and the Firemen and Hostlers:

"Provided that all cases involving discharged or suspended engineers, motormen, firemen, helpers, hostlers, or hostler helpers will be handled jointly to a conclusion by the representatives of the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen. it being understood that neither organization will have power of veto of the cases originating within the other."

It would appear to the Board that the clause recommended above might well be attached to paragraph 32 (b) of the Engineers' Schedule and to paragraph 32 (a) of the Firemen's Schedule, as a modification of those paragraphs.

In concluding we desire to re-emphasize the usefulness and importance of the machinery set up by the Railway Labor Act for the disposition of cases arising thereunder. However, we would respectfully call attention to the fact that an Emergency Board cannot obtain a complete and satisfactory picture of a dispute, such as to be able to advise you fully, without the power of subpoena, which authority an Emergency Board does not have under the present Act.

We beg to report that all parties attending the formal and informal hearings were pleasantly cooperative in presenting facts and opinions concerning the question at issue.

The members of the Board await any further suggestion from you.

Respectfully submitted,

Huston Thompson, *Chairman.*

David J. Lewis

William H. Tschappat

(Letters hereinafter attached)

November 30, 1943

Files PD-3575

PD-13856

MR. G. A. MEADE, *Vice President,*

Brotherhood of Locomotive Firemen and Enginemen,

% Atlantic Hotel, Norfolk, Virginia.

DEAR SIR: As requested by you this morning, I am stating herein the view of this management regarding the jurisdiction of the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers, respectively, in the handling of clemency cases involving engineer members of the Brotherhood of Locomotive Firemen and Enginemen.

Under the terms of the current Firemen's Agreement, as well as under the provisions of the Railway Labor Act, the Brotherhood of Locomotive Firemen and Enginemen is, in the management's view, entitled to represent its engineer members. However, under Article 32 of the agreement referred to, engineer cases must be handled under the recognized interpretation placed

upon the schedule involved (i.e. the engineers' schedule) by the officials of the company and the General Committee making the same. The interpretation of the engineers' schedule recognized by practice of long standing is that, because engineer seniority is necessarily affected by the disposition of clemency cases involving engineers, the concurrence of the Brotherhood of Locomotive Engineers is prerequisite to reinstatement. Therefore, the correct procedure, as the management understands and interprets the pertinent agreements, is for the Brotherhood of Locomotive Firemen and Enginemen to represent its engineer members in clemency cases, and for the management to withhold reinstatement unless and until concurrence of the Brotherhood of Locomotive Engineers is submitted.

Yours very truly,

[Signed] J. C. WROTON
General Manager.

cc: MR. W. E. MITCHELL, *Gen. Chmn.*
Brotherhood of Locomotive Firemen & Enginemen,
8 East 38th Street,
Savannah, Georgia.

December 14, 1944

EMERGENCY BOARD, SEABOARD AIR LINE RAILWAY EMPLOYEES

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas, the President, having been duly notified by the National Mediation Board that a dispute between the Seaboard Air Line Railway, a carrier, and certain of its employees represented by the following labor organization:

Brotherhood of Locomotive Firemen and Enginemen which dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, amended, now threatens substantially to interrupt interstate commerce within the States of Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida to a degree such as to deprive that section of the country of essential transportation service;

Now, Therefore, I, FRANKLIN D. ROOSEVELT, President of the United States of America, by virtue of the power vested in me by the Constitution and laws of the United States, and by virtue

of and under the authority in me vested by Section 10 of the Railway Labor Act, amended, do hereby create a board to be composed of three persons not pecuniarily or otherwise interested in any organization of railway employees or any carrier, to investigate the aforementioned dispute and report its findings to me within thirty days from this date.

The members of this board shall be compensated for and on account of such duties in the sum of seventy-five dollars (\$75.00) for every day actually employed with or upon account of travels and duties incident to such board. The members will be reimbursed for and they are hereby authorized to make expenditures for expenses for themselves and of the board, including transportation expenses, and in conformity with Public No. 373-78th Congress, approved June 28, 1944, not to exceed six dollars (\$6.00) per diem in lieu of subsistence while so employed.

All expenditures of the Board shall be allowed and paid for out of the appropriation "Arbitration and Emergency Boards, National Mediation Board, 1945" on the presentation of itemized vouchers properly approved by the chairman of the board hereby created.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this fourteenth day of December, in the year of our Lord one thousand nine hundred and forty-four, and of the Independence of the United States of America the one hundred and sixty-ninth.

[SEAL]

By the President:

FRANKLIN D. ROOSEVELT

E. R. STETTINIUS, JR.,

Secretary of State.

THE WHITE HOUSE

Washington, December 15, 1944

DEAR MR. THOMPSON: You are hereby designated and appointed, under authority conferred by the Railway Labor Act, as a member of an emergency board created by proclamation of the President dated December 14, 1944, to investigate and report to me respecting the dispute existing between the Seaboard Air Line Railway, a carrier, and certain of its employees, and you are hereby especially authorized to act in conformity with law and my proclamation.

The Board will organize and investigate promptly the facts as to such dispute, and on the basis of facts developed, make every effort to adjust the dispute and make a report thereon to me within thirty days from December 14, 1944.

Very sincerely yours,

FRANKLIN D. ROOSEVELT

MR. HUSTON THOMPSON, *Attorney at Law,*
Southern Building, Washington, D. C.

THE WHITE HOUSE

Washington, December 15, 1944

DEAR MR. LEWIS: You are hereby designated and appointed, under authority conferred by the Railway Labor Act, as a member of an emergency board created by proclamation of the President dated December 14, 1944, to investigate and report to me respecting the dispute existing between the Seaboard Air Line Railway, a carrier, and certain of its employees, and you are hereby especially authorized to act in conformity with law and my proclamation.

The Board will organize and investigate promptly the facts as to such dispute, and on the basis of facts developed, make every effort to adjust the dispute and make a report thereon to me within thirty days from December 14, 1944.

Very sincerely yours,

FRANKLIN D. ROOSEVELT

Honorable DAVID J. LEWIS,
Washington Inn, Washington, D. C.

THE WHITE HOUSE

Washington, December 15, 1944

DEAR GENERAL TSCHAPPAT: You are hereby designated and appointed under authority conferred by the Railway Labor Act, as a member of an emergency board created by proclamation of the President dated December 14, 1944, to investigate and report to me respecting the dispute existing between the Seaboard Air Line Railway, a carrier, and certain of its employees, and you are hereby especially authorized to act in conformity with law and my proclamation.

The Board will organize and investigate promptly the facts as to such dispute, and on the basis of facts developed, make every

effort to adjust the dispute and make a report thereon to me within thirty days from December 14, 1944.

Very sincerely yours,

FRANKLIN D. ROOSEVELT

Major General WILLIAM H. TSCHAPPAT

Falls Church, Virginia.

CONCERNING PROCLAMATION OF THE PRESIDENT,
DECEMBER 14, 1944.

(Seaboard Air Line Railway)

*Extension of Time for the Board to Investigate
Dispute and Report its Findings to the President*

Upon recommendations of the Members constituting the Emergency Board appointed by the President of the United States by his Proclamation, on the 14th day of December, 1944, and with the approval of the President, the time limit of thirty days fixed by the aforesaid Proclamation has been extended until January 19, 1945, to allow the Emergency Board to conclude its negotiations with the parties and to report its findings to the President.

The parties to the dispute hereby agree to the above extension and stipulate that if the report of the Board is made prior to midnight Friday, January 19, 1945, it shall not be challenged or objected to by any one of the parties to the dispute on the ground that it was not made within thirty days after the creation of said Board.

THOMAS L. PRESTON,
*Attorney for the Seaboard Air
Line Railway Company.*

HAROLD C. HEISS,
*Attorney for the Brotherhood
of Locomotive Firemen and
Enginemen.*

HAROLD N. McLAUGHLIN,
*Attorney for the Intervenor,
the Brotherhood of Locomotive
Engineers.*

BEFORE THE PRESIDENTIAL EMERGENCY BOARD
APPOINTED UNDER THE TERMS OF SECTION 10
OF THE RAILWAY LABOR ACT

Honorable HUSTON THOMPSON, *Chairman*.

Honorable DAVID J. LEWIS.

Major General WM. H. TSCHAPPAT.

Concerning Proclamation of the President, December 14, 1944.
(Seaboard Air Line Railway)

*Extension of Time for the Board to Investigate
Dispute and Report its Findings to the President*

Upon recommendation of the above-named members constituting the Emergency Board appointed by the President of the United States by his proclamation of the 14th day of December, 1944, it is hereby announced, with approval of the President, that the time limit of 30 days fixed by the aforesaid proclamation is hereby extended until January 19, 1945, to allow the Emergency Board to conclude its negotiations with the parties and to report its findings to the President.

The parties to the dispute have agreed to the above extension and stipulated that if the report of the Board is made prior to midnight Friday, January 19, 1945, it shall not be challenged or objected to by any one of the parties to the dispute on the ground that it was not made within 30 days after the creation of said Board.

The signed stipulation of the parties is attached hereto and made a part hereof.

By order of the EMERGENCY BOARD, this 11th day of January, 1945, at Washington, D. C.

By HUSTON THOMPSON, *Chairman*,
R. F. C. Emergency Board

THE WHITE HOUSE

Approved — January 11, 1945

FRANKLIN D. ROOSEVELT