

Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

APPOINTED MAY 18, 1945
PURSUANT TO SECTION 10
OF THE RAILWAY LABOR ACT

To inVestigate an unadjusted dispute between
the Colorado & Wyoming Railway Company
and certain of its employees represented by the
Brotherhood of LocomotiVe Firemen & Engine-
men and the Brotherhood of Railroad Trainmen

DENVER, COLORADO

JUNE 7, 1945

DENVER, Colo., *June 7, 1945.*

THE PRESIDENT,

The White House,

DEAR MR. PRESIDENT : The Emergency Board appointed by you on May 18, 1945, under section 10 of the Railway Labor Act to investigate an unadjusted dispute between the Colorado & Wyoming Railway Co. and certain of its employees represented by the Brotherhood of Locomotive Firemen & Enginemen and the Brotherhood of Railroad Trainmen, has the honor to herewith submit its report.

Respectfully submitted.

(S) H. NATHAN SWAIN, *C*

(S) RIDGLEY P. MELVIN, *Member.*

(S) EUGENE L. PADBERG, *Member.*

**REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD APPOINTED
MAY 18, 1945, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT**

In re: Brotherhood of Locomotive Firemen & Enginemen and Brotherhood of Railroad Trainmen, and Colorado & Wyoming Railway Co.

The Emergency Board appointed by the President on May 18, 1945, pursuant to the provisions of section 10 of the Railway Labor Act and in accordance with his Executive Proclamation of May 16, 1945, to investigate and report its findings with respect to certain matters in dispute between the Colorado Wyoming Railway Co. and certain of its employees represented by the Brotherhood of Locomotive Firemen & Enginemen and the Brotherhood of Railroad Trainmen, convened in the Tabor Room of the Brown Palace Hotel in the city of Denver, Colo., on May 24, 1945. All of the members of the Board, consisting of Ridgely P. Melvin, of Annapolis, Md., Eugene L. Padberg, of St. Louis, Mo., and H. Nathan Swaim, of Indianapolis, Ind., were present. Prior to the convening of the hearing, the Board organized by electing H. Nathan Swaim as chairman ; and the Board confirmed the appointment of Frank M. Williams & Co., of Washington, D. C., as its official reporter for said hearing.

The board held public hearings commencing on May 24, 1945, and concluding on May 29, 1945. The appearances were as follows :

On behalf of the employees

C. H. Keenen, Vice President, Brotherhood of Locomotive Firemen and Enginemen ;
A. J. Chipman, General Chairman, Brotherhood of Locomotive Firemen & Enginemen ;
J. A. Rash, Deputy President, Brotherhood of Railroad Trainmen;
R. H. McDonald, General Chairman, Brotherhood of Railroad Trainmen,

On behalf of the carrier

Fred Farrar, General Counsel, Colorado & Wyoming Railway Co.;
Elmer P. Cogburn, Attorney at Law, Colorado & Wyoming Railway Co,
Ward Wire, Vice President, Colorado & Wyoming Railway Co.

Evidence was submitted to the Board on behalf of the employees and the carrier, and on such evidence and the statements of the parties we base this report.

THE EMERGENCY

The carrier involved in this dispute operates a steam railroad consisting of three divisions, two of which are located in the State of Colorado, the third in the State of Wyoming. It is a short-line, class I railroad, a common carrier of property by rail, interstate, and is subject to regulation by the Interstate Commerce Commission. Its principal business consists of the transportation of freight for the Colorado Fuel & Iron Corp. hereinafter referred to as the "C. F. & I."), which corporation owns all the capital stock of this carrier, This carrier also transports property interstate for other shippers, but has no passenger service.

The northern division of the carrier, located in the State of Wyoming; extends from the iron ore mine of the C. F. & I., known as the "Sunrise Mine," to a junction with the Burlington and with the Colorado & Southern railroads at a point called Guernsey, The middle division of the carrier is located at Pueblo, Colo., in and adjacent to the steel plant of the C. F. & I, known as the Minnequa plant. The southern division extends from Trinidad, Colo., which is the southernmost city of Colorado, and a junction point with various standard trunk railroads, to mines in that general locality which produce coking coal. These three divisions of the Colorado & Wyoming Railway Co, are not connected by any lines of this carrier, but only by trunk lines of other railroads.

The products of the C. F. & I. are being used almost exclusively, at the present time, in the war effort. This corporation now employs approximately 5,000 persons. It manufactures annually one and a quarter million tons of steel ingots and many millions of 155-millimeter shells being used by our armed forces. Many of the other shippers whose property is transported by this carrier are also engaged in industries which are vital in this national emergency. The continued operation of this carrier is, therefore, essential, and if such operation were interfered with for any reason, interstate commerce would be interrupted to a degree such as to deprive sections of the country within the localities of the divisions of this railway of essential transportation service, and the war effort would be thereby greatly hampered,

All of the employees of this carrier who were members of the above-named brotherhoods, pursuant to a strike ballot distributed to them, went out on strike on May 15, 1945, and did not return to work until May 19, 1945, This resulted in a shut-down of the steel plant of the C. F. & I., at Pueblo and a stoppage of work in that plant and on the entire railroad. As a result of this action on the part of the employees, the President, by his Proclamation. declared an emergency and created this Emergency Board,

ISSUES INVOLVED IN THIS DISPUTE

The strike ballot distributed among said employees dated May 9, 1945, stated that the Grand Lodge Officers had "failed in efforts to induce the Management of the Colorado & Wyoming Railway Co, to apply the wage increase of 40 cents per daily basic pay and vacations with pay, as provided for in the settlement reached as a result of the National Wage Movement, conducted by the -BLE., BLF&E., ORC., BRT., and SUofNA_, during 1943 and 1944, to enginemen and switchmen engaged in service at the Open Hearth and Blast Furnace"; that thereafter the services of the National Mediation Board were invoked, but that mediation of the controversy also failed; and that the company was still refusing to apply the benefits mentioned to the employees in question.

The ballots further stated that the representatives of the brotherhoods felt that the companys attitude and action in this matter were unfair and unwarranted; that since they had been unable to effect a satisfactory settlement of the questions at issue, the entire matter was thereby submitted to the employees for the purpose of determining whether said employees were willing to "withdraw from the serVice" of the carrier in a "le g al" strike unless a settlement of the controversy "satisfactory to your Grand Lodge Officers" could be reached.

These two issues, that is, the application of the agreement for an increase of "40 cents per daily basic day and Vacations with pay," pursuant to the agreement dated January 14, 1944, between certain participating carriers including this carrier and the representatives of the various brotherhoods including these two brotherhoods, are the issues involved in this dispute.

HISTORY OF THE DISPUTE

In order to understand this dispute and its history we feel that it is necessary to give a brief description of the method of operation of this railroad and the steel plant of the C. F. I. and of the work of the particular posititons here involVed,

The C. F. I. steel plant located at Pueblo is a large plant covering 562 acres, which manufactures iron and steel and various products thereof. The middle division of said carrier consists of 56 miles of railway tracks located in and adjacent to said plant. Incoming coal, ore, :and other materials used by said plant are deliVered to certain interchange points in or adjacent thereto by Various other railroads, and at these interchange points are picked up by the carrier here involved. transported oVer its tracks, -and -spotted at various points within the steel plant as designated by the proper officials of

the C. F. & I. The outgoing materials and products of the plant are handled in like manner.

This corporation owns and operates within this plant 4 large blast furnaces for the production of iron, and a short distance therefrom it also operates 16 open-hearth furnaces, which produce steel. Serving these blast furnaces and open-hearth furnaces are standard, narrow-gauge, and 3-rail railroad tracks, on which materials used in these 2 sets of furnaces are moved thereto and on which the products of said furnaces are moved therefrom.

The iron produced by the blast furnaces, when taken from the furnaces, is run in a molten condition into large containers, called ladles, mounted on railroad trucks at the blast furnaces, and from there is taken to the open-hearth furnaces. The slag, or waste material, from the blast furnaces, when taken therefrom, is run into large "slag pots," spotted on the tracks by the side of said furnaces, and then hauled to nearby "slag dumps." Both the ladles and the slag pots on these railroad trucks are so moved by small engines. All of the materials used in the open-hearth furnace in the production of steel are moved in small containers called charge boxes, which are pulled by "dinky" engines, operated by one engineman, on narrow-gauge tracks, into the open-hearth furnace sheds, where they are located or "spotted" along the charging side of said furnaces.

On the opposite side of the open-hearth furnaces the molten steel is run into a large ladle, from which it is poured into large steel ingot molds located on ingot cars which have been spotted on the tracks on that side of the furnaces. Dinky engines then take these little cars, thus loaded, out to the stripper, where the molds are stripped from the ingots. These ingots, while still located on the same cars, are then pulled by the dinky engines to one of two mills or to the stock pile. In the two mills, located near the open-hearth furnaces, the steel is further processed.

The crews engaged in all such transportation in and about the open-hearth furnace, consist of one engineman and one switchman, and the equipment used is, as above stated, a dinky engine, drawing little cars and charging boxes or ingot cars on narrow-gauge railroad tracks. The crews which do the above-described transportation work around the blast furnaces consist of an engineer, a fireman, and two switchmen, one of whom is designated as the foreman.

These positions of enginemen, firemen, and switchmen in this transportation work are the positions involved directly in this dispute, designated as positions at the blast furnaces and open-hearth furnaces, and the crews filling such positions are sometimes referred to by representatives of the carrier as "plant facility" men.

Since 1918 the men employed on the engines in this blast furnace and open-hearth furnace work have been included under the contract

between this carrier and the brotherhoods in the middle seniority district. By the contract governing wages and working conditions, entered into between the carrier and these two brotherhoods, effective March 16, 1940, the switchmen employed in this transportation service connected with the blast furnaces and the open-hearth furnaces were also included in the seniority district of the middle division,

By reason of the fact that these men are thus placed on the seniority lists of the enginemen, firemen, and switchmen of the railway company, it is the contention of the brotherhoods that these men are employees of the carrier, and that all of the rules and regulations in said contract are applicable to them. During the course of the years, the carrier has apparently also understood that it was bound by these rules in the treatment, of these particular men, and, for the most part, has consistently so applied such rules.

All of the wage increases resulting from national movements for wage increases by the Various brotherhoods were applied to these men up to and including the increase of 32 cents per day recommended by the Emergency Board appointed May 31, 1943, which increase became effective April 1, 1943.

The present controversy arose out of the failure and refusal to apply to the men on these particular jobs at the blast furnaces and open-hearth furnaces, an additional increase of 0 cents per hour or 40 cents per day for an 8-hour day, and a Vacation of 1 week with pay, pursuant to the contract of January 14, 1944, between Various carriers, including this carrier, and Various brotherhoods, including the brotherhoods here in question.

This increase and a Vacation of 1 week a. year, with pay, based on the basic daily rate of the last service performed, was applied to all of the men covered by the 1940 agreement between this carrier and its employees except the men here in question. It was not applied to these men because the carrier contended that while engaged in this work at the blast furnaces and open-hearth furnaces, these men were not employees of the railway company.

The brotherhoods, on the other hand, contended that these particular while in such service, were engaged in railway work as the employees of this carrier.

The carrier distinguishes in many ways the work done by these particular men on these positions and the work of its employees engaged in the, railroad yard service. It points out that in all of its work in and about this plant, it is engaged in transportation as a common carrier; that the cars of material which it picks up at the various interchange points from the lines of other railroads and hauls to various points within the steel plant. where these cars are spotted, are involved in a continuous interstate movement of that freight, the

final destination of which movement is at the point where such cars are spotted for use by the C. F. & I.; that this carrier transports these cars on a through bill of lading, on a through rating, according to published tariffs ; and that this carrier shares, proportionately in the charge received for such transportation.

The carrier also pointed out that all of the other transportation work done by it within the limits of said steel plant for the C. F. & I, is on a bill of lading and charged for according to published tariffs ; that the only transportation work performed by it without a bill of lading consists of the occasional transportation of certain material and equipment for itself ; that all of the transportation work performed by the employees of the carrier is on the tracks and in the equipment belonging to the carrier, while on the other hand the transportation work in and around the blast furnaces and the open-hearth furnaces is on tracks and in equipment belonging to the C. F. & I.

The carrier further insists that the movement of materials by the men in question to the blast furnaces, away from the blast furnaces to the open-hearth furnaces or to the slag dump, and away from the open-hearth furnaces to the plant mills where the steel is further processed, constitutes steps in the processing or manufacturing of iron and steel by the C, F. & I. and has no connection with the transportation performed by the carrier.

On the other hand, the brotherhoods, in support of their position that these men are employees of the carrier and are entitled to the application of the 40-cent increase and 1 week's vacation with pay, pursuant to the agreement between the carrier and its employees, point out that the carrier hires these men in the first instance; that it assigns these men either in the yards on work admittedly for the carrier, or to the positions here in question around the blast furnaces and open-hearth furnaces ; that most of these men on the blast furnace and open-hearth furnace work, by reason of their being carried on a common seniority roster with the carrier's employees doing yard work in and about this plant, are permitted to interchange between their positions and positions in the yard service, all according to their classification and seniority ; that the carrier, for years, has dealt with these men under the rules of the current agreements between the carrier and its employees; that the men have been disciplined and discharged from the service of the carrier pursuant to the rules of said agreement-s; and they claim that these men are actually doing railroad work, as employees of the carrier, in these positions on the blast furnaces and the open-hearth furnaces.

Specifically, the brotherhoods rely on the agreement of December 1918, which referred to "men employed on the blast furnaces and narrow-gauge engines," and which agreement was further recognized, confirmed, and broadened by the agreement of March 16. 1940, signed

by the Vice President of this carrier as well as by the representatives of the brotherhoods involved in the instant case.

The agreement of January 1944, covering the 40-cent increase and vacation with pay was applied to all of the men covered by the 1918 and 1940 agreements except the men in the positions here in question,

It was at this point that the carrier for the first time, the brotherhoods contend, undertook to exclude these men at the blast furnaces and open-hearth furnaces from the benefits of said general agreements covering its employees. This, the brotherhoods insist, was a discrimination against these particular men and a violation of the contract of the carrier covering them, and is the basic point upon which they relied in presenting their case to this Board. They maintain that the men engaged in the open-hearth furnace and blast furnace engine and train service are entitled to all the benefits of the agreements cited, including the 40-cent per day increase, and vacations with pay, on the grounds that they are governed by the same working agreements which are applicable to other engine and train service employees of this carrier.

The parties failing to agree on the application to these men of the 40-cent increase and the week's vacation with pay, the brotherhoods formally invoked the services of the National Mediation Board on April 17, and on May 26, 1944. Various conferences and communications between the parties failed to resolve their differences.

Arbitration was suggested but was refused by both parties. The strike ballot was distributed, and the strike called as above stated, thereby threatening an interruption of interstate commerce, which fact was reported to the President under the provisions of section 10 of the Railway Labor Act, whereupon the President declared this emergency

THE HEARINGS

During the course of the hearings conducted by this Board, voluminous statements were made by the respective parties, and a mass of evidence was introduced. At the suggestion of representatives of the carrier, the Board, together with representatives of the carrier and the brotherhoods, made an inspection of the Minnequa plant at Pueblo, in order that the Board might see and better understand the actual operation of the plant, as related to the work done by the men on the particular positions here in question. We saw there the physical lay-out of the plant, the type of special equipment used in this particular work, the location of the tracks employed in this work with relation to the blast and open-hearth furnaces and also with relation to the tracks of the C. W.

We were impressed by the fact that in the operation of the blast furnaces and the open-hearth furnaces, the timing of placing mate-

rials in these furnaces and of taking the iron and steel therefrom was of first importance; that in placing the materials in both types of furnace, it was essential that exactly the right quantity of the Various materials be placed therein at precisely the right time, and, further,. that in taking the iron and steel from the furnaces, which **is done seV-**eral times each day, it likewise had to be done at precisely the time when these materials had been subjected to the heat of the furnaces for the right period; and that these facts made it absolutely necessary that the ladles, slag pots, charging boxes, and ingot cars be spotted and moVed under the direction and superVision of the officials of the C. F. I. who were in charge of these furnaces. These furnaces, because of the nature of the work done with them, are operated 24 hours per day, The men on the positions here in question work in three shifts.

During each shift, while the men of that shift are working on these positions, they are at all times subject to the superVision and direction of the officials of the C. F. I. in charge of these furnaces, as to the manner and the time of rendering their Various services in this work. This continuing superVision and direction of these men by the C. F. & I. officials is necessary to the production of iron and steel in these furnaces. Therefore, during this period of time, while the men are engaged in this serVice, they are not subject to the continuing authority of the carrier to superVise and direct the manner of the rendition of their service.

During the course of the hearing, representatiVes of the carrier repeatedly said that their reason for not haVing applied the 40-cent increase to these men was the fact that they had considered these men to be subject to the Fair Labor Standards Act, or "Wage and Hour Law," and that these men, under this law, had been paid by the corporation, and had accepted, overtime for work in excess of 40 hours per week; that the application of the 40-cent increase would, therefore, be a duplication of the amount these men had receiVed for overtime in excess of 40 hours per week. They also insisted that, as a matter of actual .fact, these men were drawing compensation in excess of the amount they would receive if they were considered railway employees and the 40-cent increase were added to their present basic rate of pay. Exhibits and testimony were introduced to sustain this latter contention.

Representatives of the brotherhoods denied that they were seeking an increase of the actual compensation now being paid to these men. They stated that their purpose in this dispute was to secure for these men a guaranty by written contract. of compensation equal to the amount the regular railway employees of this carrier were receiving after the application of the 40-cent increase; that since these men were under the working agreement of 1940. they should be considered

as employees of the carrier under the agreement of 1944 and entitled to all of the benefits provided for the employees by these two **agreements**. They insisted that the application of the 40-cent increase to these particular men would not increase the total compensation which they are at present receiving, because they were willing to waive and forego all overtime in excess of 40 hours per week, bonuses, and all other forms of compensation now being paid to these men by the C. F. & I. which were not required by the agreements between the carrier and these brotherhoods.

While the hearings were in progress, the Board many times reminded the parties of the seriousness of any stoppage of work by the employees of this carrier and of its significance at this particular time to the war effort of our country.. It was repeatedly suggested to the parties that they should compromise their differences, even though it meant some sacrifice on the part of both ; that the production of steel, 155-millimeter shells, and the various other products of the Minnequa plant must not be interfered with as a result of differences between the employees and the management.

It was suggested that both parties submit proposals of how their differences might be amicably composed. In response to this suggestion, proposals were submitted by both the carrier and the brotherhoods:, but neither of these proposals contained any real basis of compromise.

NEGOTIATIONS FOR COMPROMISE

After the public hearings were concluded, the Board held several meetings with the parties separately, in an endeavor to find a satisfactory solution which would result in an amicable settlement of their differences, at least for the duration of the war and for a definite period thereafter. The Board felt that such a compromise, which would avoid any stoppage of work for such period, was justified by the present war emergency.

In the conferences with the representatives of the brotherhoods, the Board pointed out to them that if these particular men, while performing work at the open-hearth and blast furnaces, were considered as employees of the carrier, as contended for them, the Board seriously doubted that the 40-cent increase in question should be applied for the reason that they were actually receiving, or were entitled to receive, overtime for work in excess of 40 hours per week. We reminded them that the Stabilization Board had apparently taken the position that the former increase of 32 cents per day brought the compensation of railway employees up to the maximum compensation which could be paid them under the "Little Steel Formula." We discussed with them the statement of the President of the United States in awarding the 40-cent increase here in question, and re-

mind them of the fact that the President had stated that that increase was granted in answer to the request of the railway employees for the payment of time and a half for time worked in excess of 40 hours per week and for expenses when away from home.

In that statement the President explained that he believed that railroad employees should be paid time and a half for time worked in excess of 40 hours per week, as practically all other employees are paid, but that this could be accomplished only by Congress repealing the exemption provisions of the Wage and Hour Law as to railroad employees, or by agreement of the carriers and the employees. The President, thereupon, in determining that the railroad employees were entitled to an increase of 5 cents per hour, or 40 cents per day, stated positively that this amount should be paid "as the equivalent of or in lieu of claims for time and a half pay for time over 40 hours and for expenses while away from home."

We pointed out to the representatives of the brotherhoods that we doubted seriously whether such increase could properly be applied to the particular employees here in question, since they had no away-from-home expenses and since they were being paid overtime in excess of 40 hours under the provisions of the Wage and Hour Law,

We also suggested to the representatives of the brotherhoods that even if the Board should consider these particular men railway employees and should find that the 40-cent per day increase should be applied to them, we seriously doubted that these men, while thus employed, could be legally taken out from under the Wage and Hour Law by waiver, contract, or otherwise. In other words, we felt that if the Wage and Hour Law applies to these men they could not, by any manner of contract between the brotherhoods and the carrier, be removed from the operation of that law ; that if this assumption were correct, any increase in the basic wage granted to these men would necessarily result in an increase in the total compensation which they are now receiving under the Wage and Hour Law, We explained to them that this would result in a Violation of the provisions of the stabilization program, and that we, as members of this Emergency Board, are required to certify in our report that any settlement suggested or approved by us would not violate the provisions of the Stabilization Act of October 1942, as amended by section 202 of the Act approved June 30, 1944,

The Board suggested to the representatives of the brotherhoods that all of these difficult questions might be avoided and a decision postponed on the question of whether these particular men, while filling these positions at the blast furnaces and open-hearth furnaces, were or were not employees of the carrier within the meaning of the Railway Labor Act ; that this might be done by a compromise agreement which would provide that, for the duration of the war and for some definite

period thereafter, these particular men, while so employed, should continue to be treated as covered by and subject to all of the provisions of the agreement of 1940, but that the increase of 40 cents per day should not be applied to the basic wage of these particular men while so employed, but instead that it should be agreed, in writing, that these men should be paid total compensation, including the overtime and bonus, in a total amount each pay day which would at least equal what they would have received, by an increase of 40 cents per day on their basic pay and without the payment of overtime in excess of 40 hours per week or bonus ; that is, that they should receive, each pay day, compensation which would equal what they would have received if they had been considered regular railway employees with the basic rate increased by this 40 cents per day,

Such a proposed compromise agreement would also have provided for vacations with pay being granted pursuant to the agreement thereon between the carrier and its employees.

The Board felt that such a proposed agreement could be worked out between the parties in such a manner as to give to the employees all that the representatives of the brotherhoods had repeatedly said they were really contending for. It seemed for a time, during our conferences, that this suggestion would be followed by the representatives of the brotherhoods, but they finally announced to the Board that the only proposition to which they would agree on behalf of the employees must provide for a 40-cent increase in the basic daily wage of these employees and a vacation of 1 week with pay, in accordance with the rules governing vacations of regular railway employees.

This, of course, was the original demand which they had made on the carrier, without any variation and without giving up in the slightest detail any point for which they had been originally contending. In spite of their repeated statements that they wanted to cooperate and do everything they possibly could to reach a compromise agreement, they finally admitted that they were unwilling to make any concession whatever to that end.

On such a proposed settlement, the carrier, of course, would be required to continue to recognize the rules of its agreements between its employees as being applicable to these particular employees while working at positions at the blast furnaces and the open-hearth furnaces. This requirement would impose on the carrier a considerable burden, because the attempt to deal with these men in these positions under the rules of said agreement was stated by the carrier to be the cause of endless controversies with these men. Such a compromise agreement would also provide that during the period covered by such a proposed agreement, the carrier would not take any further steps under the provisions of the Railway Labor Act i

trying to take these men out from under its agreement with its railway employees.

It was understood, of course, that such an agreement should be "without prejudice to the rights of either party" in any manner as to a final determination of the correct status of these particular men while working on these positions,

This same suggestion for a compromise agreement was given to the representatives of the carrier, and, while still under consideration by them, was flatly rejected by the representatives of the brotherhoods, who gave this Board their ultimatum that they would not make any agreement which did not give them everything contended for in their original demands.

This attitude on the part of the representatives of the brotherhoods, of course, left no subject for further discussion with the representatives of the carrier. It left the Board no alternative other than to proceed with its consideration and findings as to the correct status of these particular men while working on these positions.

JURISDICTION OF THE BOARD

Throughout the proceedings of this Board, the question of its jurisdiction has been raised by both representatives of the carrier and representatives of the brotherhoods. Section 10 of the Railway Labor Act provides that if a dispute between a carrier and its employees be not adjusted under the other provisions of the Act, and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may, thereupon, in his discretion, create a Board to investigate and report respecting such dispute.

This section of the Act makes it the duty of such a Board, when appointed by the President, to investigate promptly the facts as to the dispute and make a report thereon to the President.

In the instant case the dispute was between the carrier and its employees, represented by the two brotherhoods. The strike ballot was distributed to all members of these two brotherhoods employed by this carrier. The resulting strike was participated in by all of the members of these two brotherhoods who were employees of this carrier, most of whom were concededly railway employees within the meaning of the Railway Labor Act.

These facts unquestionably show such a dispute as was contemplated by the provisions of section 10 of the Railway Labor Act, and justified the declaration of an emergency and the creation of an Emergency Board by the President. Having thus been duly and legally created,

this Emergency Board, by law, is given the jurisdiction to investigate and report the facts concerning such dispute, regardless of whether the particular men over whom the dispute arose were or were not employees of the carrier.

FINDINGS

In this proceeding, pursuant to the direction of the President, we have made every effort to adjust the dispute. Since the suggested agreement which we proposed, as above outlined, contained every advantage for the employees which we felt we could legally approve, and since that suggestion was flatly rejected by the representatives of the brotherhoods, without offering in its place any proposal for an agreement which we could legally approve, the Board is bound to make its findings of fact and report thereon.

These findings are :

1. That the employees here in question, while occupying the positions above-described at the blast furnaces and the open-hearth furnaces, were not subject to the continuing authority of the carrier to supervise and direct the manner of rendition of their service; that in this service and while performing it, they were subject to the supervision and direction of the officials of the Colorado Fuel Iron Corp. in charge of these two departments as to the manner of rendition of such service.

2. That these employees, while rendering such service at the blast furnaces and open-hearth furnaces, were not employees of the Colorado Wyoming Railway Co. within the meaning of the term "employee," as defined in the Railway Labor Act,

3. That the award and agreement as to the 5 cents per hour, or 40 cents per day, increase in basic wage, and for 1 week's Vacation with pay, is not applicable to said employees while engaged in service at the blast furnaces and open-hearth furnaces of the Colorado Fuel & Iron Corp.

CONCLUSION

As a part of our report in this case we deem it relevant to point out that the factual situation here involved had none of the features which justified the creation of an "emergency," within the meaning of the Railway Labor Act.

Under the heading of "General Purposes" this Act states its very first purpose to be "To avoid any interruption to commerce or to the operation of any carrier engaged therein"; and under the following heading of "General Duties" it is declared to be the duty of all parties concerned to exert every reasonable effort to settle their disputes, "in order to avoid any interruption to commerce or to the operation of

any carrier growing out of any dispute between the carrier and the employees thereof."

According to the record before this Board, the men employed at the blast furnaces and open-hearth furnaces were in most cases being paid more than they would have received under the application to them of the 40-cent per day increase in basic pay, and were being dealt with under the working agreement with the carrier in such manner that their material rights and interests were not being jeopardized. The carrier, likewise, was operating under conditions which had no aspects of an "emergency,"

Under these circumstances, to choose this particular time to precipitate a crisis that would interrupt commerce and result in the stoppage of the production of vital war materials, was entirely unjustified. In critical times such as these through which our country is now passing, it is all the more incumbent upon the parties who are subject to the provisions of the Railway Labor Act to faithfully observe its spirit and purpose, as well as to obey its expressed mandates, looking to the "prompt and orderly settlement of all disputes."

Respectfully submitted.

(S) **H. NATHAN SWAIM**, *Chairman.*

(S) **RIDGELY P. MELVIN**, *Member.*

(S) **EUGENE L. PADBERG**, *Member,*