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Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

APPOINTED DECEMBER 4, 1945
PURSUANT TO SECTION 10
OF THE RAILWAY LABOR ACT

To investigate an unadjusted dispute between the Texas & New Orleans Railroad Company and Hospital Association of the Southern Pacific Lines in Texas and Louisiana and certain of its employees, represented by thirteen railway labor organizations.

HOUSTON, TEXAS

JANUARY 5, 1946

(No. 30)

JEFFERSON CITY, Mo., *January 5, 1946.*

THE PRESIDENT
The White House

MY DEAR MR. PRESIDENT: Herewith is submitted a report of The Emergency Board appointed by you on December 4, 1945, under section 10 of the Railway Labor Act, as amended, to investigate and report respecting a dispute between the Texas & New Orleans Railroad Company and Hospital Association of the Southern Pacific Lines in Texas and Louisiana, the carrier and certain of its employees represented by thirteen railway labor organizations.

We await your further pleasure.

Respectfully submitted,

(S) RICHARD F. MITCHELL, *Chairman.*

(S) JOHN W. YEAGER, *Member.*

(S) ERNEST M. TIPTON, *Member.*

(11)

**REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD APPOINTED
DECEMBER 4, 1945, UNDER SECTION 10 OF THE RAILWAY LABOR ACT,
AS AMENDED**

To investigate an unadjusted dispute between the Texas & New Orleans Railroad Company and Hospital Association of the Southern Pacific Lines in Texas and Louisiana and certain of its employees represented by thirteen railway labor organizations.

Under section 10 of the Railway Labor Act, as amended, the President of the United States, by Executive order, created an Emergency Board on November 30, 1945, to investigate and report to him respecting the dispute existing between the Texas & New Orleans Railroad Company and Hospital Association of the Southern Pacific Lines in Texas and Louisiana, the carrier and certain of its employees. On December 4, 1945, the President of the United States appointed Richard F. Mitchell of Fort Dodge, Iowa, John W. Yeager of Lincoln, Nebr., and Ernest M. Tipton of Jefferson City, Mo., as members of that Emergency Board.

Pursuant to the order of appointment, this Board met in the Federal Building, Houston, Tex., at 10 o'clock, December 10, 1945. It organized by selecting Richard F. Mitchell to serve as chairman, and then confirmed the appointment of Frank M. Williams as reporter. All members of the Board were present. Public hearings were held, commencing December 10, 1945, and were continued through December 14. On account of the Christmas holidays, all of the parties stipulated in the record that the time would be extended until January 10, 1946, for the Board to make its report to the President of the United States. This stipulation was reported to the President and received his approval, which is as follows:

"Before the Presidential Emergency Board appointed under the terms of Section 10 of The Railway Labor Act:

JUDGE RICHARD F. MITCHELL, *Chairman*

JUDGE ERNEST M. TIPTON

JUDGE JOHN W. YEAGER

"Concerning Proclamation of the President, November 30, 1945.

"Extension of time for the Board to investigate disputes and report its findings to the President.

"Upon recommendation of Judge Richard F. Mitchell, Chairman, Judge Ernest M. Tipton and Judge John W. Yeager, members of and constituting the Emergency Board appointed by the President of the United States by his Proclamation of the 30th day of November 1945, to investigate the facts and report thereon to the President regarding certain questions and differences between the Texas & New Orleans Railroad Company and Hospital Association of the Southern Pacific Lines in Texas and Louisiana and its employees, represented by thirteen cooperating organizations. It is hereby announced, with approval of the President, that the time limit of 30 days fixed by the aforesaid proclamation is hereby extended to allow the Emergency Board until January 10, 1946, to report its findings to the President, both dates inclusive.

"The parties to the disputes have agreed to the above extensions and have stipulated into the record that the Emergency Board may have until January 10, 1946, to file its report with the President of the United States. And that no objections will be made by either of the parties on the grounds that it was not made within the 30 days after the creation of said Board.

"The stipulation of parties is a part of the original record in this case, having been stipulated orally into the record in the presence of both parties.

"By order of the EMERGENCY BOARD, this 24th day of December 1945.

By (S) RICHARD F. MITCHELL,
Chairman, Emergency Board."

"THE WHITE HOUSE

"Approved—

"December 28, 1945:

"(S) HARRY S. TRUMAN."

At the close of the hearing, the Board offered its services to act as a mediation board or to assist in any other way to bring about a peaceful settlement by the parties. After numerous meetings with the parties the Board was unsuccessful in its efforts to bring about a settlement. The appearances were:

For the employees—

Harrison C. Hobart, assistant Grand Chief, Brotherhood of Locomotive Engineers, appearing for the Brotherhood of Locomotive Engineers;

G. A. Meade, Vice President, Brotherhood of Locomotive Firemen and Enginemen, appearing for the Brotherhood of Locomotive Firemen and Enginemen;

William E. B. Chase, Deputy President, Brotherhood of Railroad Trainmen, appearing for the Brotherhood of Railroad Trainmen and Brotherhood of Railway Signalmen of America;

H. W. Harper, appearing for Grand Lodge of the Brotherhood of Railway Steamship Clerks, Freight Handlers, Express and Station Employees;

J. H. Anderson, appearing for the International Association of Machinists, the International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Brotherhood of Railway Carmen of America, International Association of Sheet Metal Workers, International Brotherhood of Electrical Workers, International Brotherhood of Firemen and Oilers, Helpers, Roundhouse and Railway Shop Laborers;

H. H. Reddick, appearing for the Grand Lodge of the Brotherhood of Maintenance of Way Employees;

H. Newman, appearing for the Grand Lodge of the Order of Railway Telegraphers;

For the carrier:

John P. Bullington, General Counsel, appearing for Texas & New Orleans Railroad Company.

HISTORY OF THE DISPUTE

The Hospital Association of the Southern Pacific Lines in Texas and Louisiana is a voluntary unincorporated association organized in the year 1914 under the laws of Texas. Its bylaws provide that its affairs shall be under the control of a board of managers, consisting of seven persons. Three of the members hold certain positions with the carrier: First, the general manager; second, one of the general counsel to be designated by the general manager; and third, the auditor. Three other members are elected by certain groups of employees as set out in the bylaws. These six members then elect the chief surgeon of the Association, who is the seventh member of the board. He has always been appointed by the carrier as its chief surgeon. Only the board of managers has the power to change the bylaws.

The carrier owns a hospital in Houston, Tex., and leases it to the Hospital Association. The present lease was executed September 15, 1924, and the annual rental called for by that lease is

\$20,641.93, and maintenance, insurance, and taxes. However, the carrier has never collected the full amount called for in that lease; in fact, the carrier has waived part of the rental and since the year 1939 has waived all of the rent due under that lease. The carrier furnishes legal, engineering, and auditing services without cost to the Hospital Association.

The declared object of the Hospital Association is to furnish medical and surgical treatment to the sick and injured employees of the carrier. In addition to the hospital located at Houston, Tex., there are other hospital facilities and physicians located at various points along the line of the carrier. Every employee of the carrier is a member of the Hospital Association and each employee has authorized the carrier to deduct from his monthly pay his monthly Hospital Association dues. The dues collected from the employees of the carrier are approximately \$35,000 a month. The carrier has all new employees examined by the Hospital Association, as well as all train crews which are required to be re-examined from time to time. In the case of on-duty injuries, the injured employee is treated by the Hospital Association without expense to the carrier. The carrier frankly admits that it receives both a direct and indirect benefit from the Hospital Association.

The chief surgeon and other physicians of the Hospital Association are the chief surgeon and physicians of the carrier as well, and are given annual passes which entitle them and members of their family to ride the carrier's trains free of charge; in fact, many of these physicians receive no other compensation.

The dispute concerns the proposal of the organizations representing the various employees that an agreement be entered into between the organizations and the carrier providing the following:

"1. That the Hospital Association bylaws be changed to provide for a majority representation by the employees.

"2. That the T. & N. O. Railroad Co. defray at least half cost of all on-duty injuries and that for the balance of the year 1945, pay an amount of \$2,500 per month and thereafter the sum to be paid per month to be based upon the experience of the previous year, with an adjustment to be made at the end of each calendar year based upon the actual experience of that year.

"3. That a certified audit be made of all hospital funds for the period 1914 to 1939 by a firm of certified public accountants.

"4. That members of the Hospital Association in Texas and Louisiana be given a copy of any diagnosis, findings, or recommendations made in connection with their physical condition upon request; and

"5. That the unethical practice of divulging medical history of hospital members in Texas and Louisiana to members of the T. & N. O. Railroad Co., Claim Department and other T. & N. O. Railroad Co. officials by members of the staff of the Southern Pacific Hospital Association be discontinued."

The thirteen organizations representing the various groups of employees of the carrier spread a strike ballot among their members. A large majority voted in favor of the strike.

OPINION OF THE BOARD ISSUE NUMBER ONE

The first issue in dispute relates to a demand by the employees that the Hospital Association bylaws be changed so as to give a majority representation to the employees. As previously stated, under the bylaws of the Hospital Association the board of managers consists of three carrier officials, three employee members and the chief surgeon. It is the employees' contention in this dispute that the present bylaws give the carrier four members on the board for the reason that the chief surgeon of the Hospital Association is also the chief surgeon for the carrier.

While this Board was hearing the evidence in this case, the carrier made a written proposal of settlement of this dispute which was read into the record. On this issue, the effect of the offer was that the bylaws be changed so that all the members of the board of managers should be employee members. Also, during the hearing the carrier stated that if its offer on this issue was accepted, it would cooperate with the board of managers by furnishing legal, engineering, and auditing service without charge, and fully cooperate in any other way it could.

The record shows that practically all the cash income of the Hospital Association is paid in by the employees; in fact, about \$35,000 a month. On the other hand, the carrier is now giving the use of its hospital buildings in Houston to the Hospital Association; it furnishes legal, engineering, and auditing service without cost, and it also furnishes annual railroad passes to the medical staff and other employees of the Hospital Association, but contributes a very small amount of cash. The Hospital Association is beneficial to both the employees and the carrier.

From the above facts, this Board concludes that the employees are entitled to a majority representation on the board of managers. This Board believes that the best interests of the Hospital Association will be served by the board of managers being composed of both carrier members and employee members.

This Board recommends that the bylaws of the Hospital Association be changed so as to:

1. Eliminate present active service requirements applying to employee Association members elected to the board of managers, and provide that membership will be a sufficient qualification for election to the board of managers. With this change of the bylaws, Messrs. E. C. Wolff and P. J. Gibson will be seated on the hospital board of managers immediately. (Wolff and Gibson received the highest vote in the September 1945 election, but were not seated because they were not in active service.)

2. Provide for an additional member on the board of managers to be elected from certain designated group or groups of employees so as to make total board membership of eight (8) persons consisting of:

- (a) General manager of company, or representative designated by him.
- (b) One of the general counsel of the company to be designated by the general manager of the company.
- (c) Auditor or assistant auditor of the company.
- (d) Employee member representing the yardmasters, train, engine and yard service employees, dining car stewards, and bus operators, New Orleans terminal.
- (e) Employee member representing the office, telegraph, clerical, station and store department employees.
- (f) Employee member representing shopcrafts.
- (g) Employee member representing maintenance of way, signal department employees, and all other employees not otherwise represented.
- (h) Chief surgeon, to be ex officio member of board without a vote.

3. So long as contract between Association and Company as herein referred to remains in effect, the chief surgeon of the Association also shall be chief surgeon of the company. He shall be appointed by the general manager of the company with the approval of the board of managers of the Association. The general manager shall have sole right to remove the chief surgeon.

4. Such other changes in present Hospital Association bylaws and rules and regulations as may be necessary to conform to the foregoing arrangements and to carry out any contract arrangements with the company as hereafter suggested. This is not to be construed as limiting future boards of managers from changing bylaws from time to time as they may deem advisable, provided that any such changes shall require majority vote of the entire membership of the board of managers.

ISSUE NUMBER TWO

The second issue in dispute is that the carrier pay at least one-half of the on-duty injury expenses, that sum to be determined upon the experience of the previous year, with an adjustment to be made at the end of each calendar year based upon the actual experience of that year, and that for the balance of the year 1945 to pay \$2,500 a month for the services rendered on-duty injured employees.

Under the present system of keeping the books it would be impossible to determine the costs to the Hospital Association of treating on-duty injuries, and the Board does not believe that in any other way an accurate expense accounting for such injuries could be obtained for the reason that a large percent of the total expense of the Hospital Association is for medical cases where hospitalization is not needed. It would, therefore, be necessary to arrive at some arbitrary figure that the carrier should pay for such services furnished it.

At the present time the carrier makes no cash payment for these services, but it does waive the rent due it from the Hospital Association for the use of the hospital at Houston, furnishes legal, auditing, and engineering services, and furnishes annual passes to the Hospital Association employees. In the carrier's offer of settlement made during the hearing the carrier offered to enter into a contract with the Hospital Association whereby it would pay the Association \$750 a month in addition to free rent of the hospital buildings at Houston, Tex., and also continue to furnish legal, engineering, and auditing services without expense to the Hospital Association. It would continue to collect dues from the employee members and furnish railroad passes to the employees of the Hospital Association as far as it could legally do so. This offer also contained a provision for the purchase of the hospital buildings and grounds.

The Board recommends that the following part of the carrier offer be accepted:

"1. Hospital Association to be privileged to make use of hospital premises, grounds, and buildings, and equipment owned by the Company, rent free.

"2. Hospital Association to pay all taxes on hospital grounds, buildings, equipment, and to maintain the grounds, buildings, and equipment and to operate the establishment at the entire expense of the Association.

"3. Company to arrange (so far as it may do so legally) to take care of deductions from employee members' wages in accordance with the authorized dues of the Association and to do the necessary accounting and handling of the money so received for the account of the Association in Company's Accounting and Treasury Departments, following substantially the same system as presently in effect without making any charge against the Association for this service. Company also to provide legal services on the part of Company's Legal Department to such extent as may be required by Hospital Association, except in case of any controversial issue between Hospital Association and the Railroad Company. In such event, Association to look elsewhere for legal services at the expense of the Association. Company also to give the service of its Purchasing Department and its Engineering Department without charge for consulting advice, making of plans and specifications, and contracts that may be required by Association in carrying on Association's maintenance and operation of the hospital facilities.

"4. Company to extend free transportation privileges to doctors and technicians on staff of chief surgeon, so far as it may legally do so, and in conformity with customary practice.

"5. Company to contribute \$750 per month to the Hospital Association.

"6. Hospital Association to make no charge against Company for any medical, surgical, or hospital treatment or service rendered on account of any member of the Hospital Association.

"7. The Contract shall extend until December 31, 1947 and thereafter until canceled by either party on the giving of 90 days' written notice. If, at the end of the primary term of said contract or at any time thereafter, the Company should terminate the contract by giving the required notice, the Association shall have the option, upon the giving of written notice to the Company within 90 days of the date of the Company's notice of cancellation, to purchase from the Company the hospital building, grounds, and equipment owned by it in Houston and now being used by the Association. The price to be paid by the Association shall be fixed by a board of three appraisers, one to be appointed by the Company, one to be appointed by the Association and the third to be appointed by the other two. If the two are unable to agree upon the third, he shall be appointed by any judge of the District Court of the United States for the Southern District of Texas. The price so fixed shall, at the option of the

Association, be paid either in cash or partly in cash and partly on credit. If the latter method of payment be elected the Association shall make a down payment of not less than 20 percent of the total purchase price in cash and shall agree to pay the remainder in equal annual installments over a period of not more than 10 years, all deferred payments to bear interest at the rate of 3 percent per annum from date until paid. All deferred payments shall be secured by a vendor's and deed of trust lien on the property conveyed."

This Board is of the opinion that after the bylaws are amended as previously recommended in this report, a contract be executed between the carrier and the Hospital Association embodying the above provisions, with the exception that the option to purchase mentioned in paragraph 8 should be for 3 years, to wit, December 31, 1948. Also, paragraph 4 should be changed to read as follows:

Company to extend free transportation privileges to doctors and technicians on staff of chief surgeon and the employees of the Hospital Association, so far as it may legally do so, in conformity with customary practice.

ISSUE NUMBER THREE

Issue Number Three is that "a certified audit be made of all hospital funds for the period 1914 to 1939 by a firm of Certified Public Accountants." The record shows that "1939" was a clerical error and should read "for the period 1914 to 1945." The testimony shows that an audit by Certified Public Accountants would cost in excess of ten thousand dollars and it is the contention of the employees that the expense for the audit should be borne by the carrier.

On October 31, 1945, there was an audit made by the auditor of the carrier who is a member of the board of managers of the Hospital Association. This audit shows that the total contributions from the employees to the Hospital Association from April 1, 1914, to October 31, 1945, were \$7,797,592.53, and that the Hospital Association had on hand on October 31, 1945, \$100,000 in Series "G" War Savings Bonds and a cash balance deposited in the bank of \$183,470.92. H. W. Harper, testifying in behalf of the employees, stated, "We entertain no doubts as to the accuracy of the audits nor as to the actuality of the assets shown."

We find nothing in the record that causes us to doubt the accuracy of the October 31, 1945, audit and recommend that if an audit

is desired the cost of same should be borne by the Hospital Association.

ISSUE NUMBER FOUR

The fourth issue is that the "members of the Hospital Association in Texas and Louisiana be given a copy of any diagnosis, findings, or recommendations made in connection with their physical condition upon request."

This issue deals mainly with the train crews. It is necessary to the safety of the running of the trains that its crews be given a periodical physical examination and if any member of a train crew is found physically unfit to operate a train he is withheld from service. In the past the carrier has refused to give an employee a copy of the report of his physical examination when he is held out of service. This practice should be corrected.

However, this Board does not think this is a matter between the Hospital Association and the employees, but, rather, a matter that concerns only the employees and the carrier. For that reason this Board suggests a separate agreement be made between the organizations represented here and the carrier to the effect that an employee withheld from service will, upon request, be given a copy of the examining physician's findings and diagnosis.

This Board recommends that a separate agreement be entered into between the various organizations represented at this hearing and the carrier to the effect that employees examined or re-examined at the request of the carrier will, when held out of service, upon request of the employee involved, be promptly furnished with a copy of the examining physician's findings and diagnosis.

ISSUE NUMBER FIVE

The fifth issue is that "the unethical practice of divulging medical history of Hospital members in Texas and Louisiana to members of the T. & N. O. Railroad Claim Department and other T. & N. O. Railroad Company officials by members of the staff of the Southern Pacific Hospital Association be discontinued."

The previous practice of giving a medical history of injured employees to the carrier's claim department was discontinued prior to this hearing and if this Board's recommendations are followed these practices cannot be revived.

CERTIFICATION

In accordance with the provisions of the Stabilization Act of October 2, 1942, as amended by section 202, approved June 30, 1944, we hereby certify that the recommendations of this Board do not involve a wage increase, but deal solely with the operation of the Hospital Association which is operated by the carrier and its employees.

Respectfully submitted,

(S) RICHARD F. MITCHELL, *Chairman.*

(S) ERNEST M. TIPTON, *Member.*

(S) JOHN W. YEAGER, *Member.*

