

Report
To
THE PRESIDENT
BY THE
EMERGENCY BOARD

APPOINTED OCTOBER 16, 1947
PURSUANT TO SECTION 10 OF THE
RAILWAY LABOR ACT

To investigate an unadjusted dispute between the
Atlanta & West Point Rail Road Co. and the Western
Railway of Alabama and certain of its employees,
represented by the Brotherhood of Locomotive
Engineers

(NMB Case No. A-2661)

NOVEMBER 1, 1947

(No. 51)

ATLANTA, GA., *November 1, 1947.*

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT: This emergency board, created by you on October 16, 1947, under section 10 of the Railway Labor Act, as amended, to investigate and report on certain unadjusted disputes between the Atlanta & West Point Rail Road Co. and the Western Railway of Alabama and certain of their employees represented by the Brotherhood of Locomotive Engineers, has the honor to submit herewith its report and recommendations based upon its investigation of the matters in dispute.

ERNEST M. TIPTON, *Chairman.*

HARRY H. SCHWARTZ, *Member.*

JOHN T. McCANN, *Member.*

(II)

**REPORT TO THE PRESIDENT BY THE EMERGENCY
BOARD, APPOINTED OCTOBER 16, 1947, PURSUANT
TO SECTION 10 OF THE RAILWAY LABOR ACT, AS
AMENDED**

To investigate and report on certain unadjusted disputes between the Atlanta & West Point Rail Road Co. and the Western Railway of Alabama and the Brotherhood of Locomotive Engineers.

INTRODUCTORY

By Executive Order 9899 issued October 16, 1947, the President of the United States created an emergency board pursuant to section 10 of the Railway Labor Act, as amended, to investigate and report on certain unadjusted disputes between the Atlanta & West Point Rail Road Co. and the Western Railway of Alabama and certain of its employees represented by the Brotherhood of Locomotive Engineers, and appointed as members of said board Judge Ernest M. Tipton of Missouri, Harry H. Schwartz of Washington, D. C., and John T. McCann of New York City.

The board as thus constituted met in the conference room of the United States Conciliation Service, 10 Forsyth Street Building, Atlanta, Ga., at 11 a. m., October 23, 1947. It selected Ernest M. Tipton as chairman, and approved the designation of Ward & Paul of Washington, D. C., as its official reporter. The following appearances were entered:

For the Atlanta & West Point Rail Road Co. and the Western Railway of Alabama, Hugh Powell, Esq., of general counsel; Marshall L. Bowie, director of personnel; and A. T. Miller, superintendent of motive power.

For the Brotherhood of Locomotive Engineers, P. C. Southworth, assistant grand chief engineer, and S. C. Park, general chairman.

For the Brotherhood of Locomotive Firemen and Enginemen, Harold C. Heiss, Esq., Francis P. Talty, Esq., S. C. Phillips, vice president, and J. L. Wiggins, general chairman.

The Brotherhood of Locomotive Firemen and Enginemen filed a motion to be permitted to intervene as a party to the proceedings, and after due consideration the motion was sustained.

THE EMERGENCY

Under date of August 5, 1947, the officials of the Brotherhood of Locomotive Engineers spread a strike ballot among the locomotive engineers of the above railroads reciting that on different dates from July 11, to August 14, 1947, they had negotiated with the management endeavoring to secure settlement of 11 claims and protests. The ballot notice specified and listed these claims as cases Nos. 1 to 11. By a large majority the engineers voted to strike unless a settlement of the claims could be secured. Following the strike vote negotiations continued and all claims except case No. 8 and case No. 9 were negotiated to final settlement. These two cases are listed as follows on the strike ballot notice of August 25:

Case No. 8: Protest against change made in seniority standing of Engineers J. T. Cox and R. A. Harrison, which was in contravention to engineers agreements.

Case No. 9: Claim of M. L. Morgan, fireman, for reinstatement with pay for time lost until such time as he is reinstated, account of being removed from firemen's seniority roster in contravention to application of rules of firemen's agreements and without proper investigation as provided for in existing agreements.

On September 11 the management was advised that a strike of the engineers had been set for September 17. The National Mediation Board mediated the disputes on the property and at Washington. As a result of mediation all claims listed on the strike ballot were composed except Nos. 8 and 9 set forth above. On August 20 the management carried these two cases to the first division of the National Railroad Adjustment Board, and the Brotherhood filed with the first division its answer September 16, 1947.

However, the Brotherhood of Locomotive Engineers, notwithstanding pendency of these two claims on the docket of the first division, National Railroad Adjustment Board, on October 11 called a strike to go into effect at 6 a. m. October 16, 1947. The National Mediation Board advised the President that this dispute if unadjusted threatened to substantially interrupt interstate commerce to a degree such as to deprive sections of the country of essential transportation service. Thereupon the President in the exercise of his discretion under section 10 of the Railway Labor Act created this emergency board. The Railway Labor Act, section 10, also provides that:

After the creation of such board, and for 30 days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

After hearing the evidence and arguments in these disputes, the Board attempted by mediation to secure a settlement, but was unable to do so.

CONSIDERATION OF THE DISPUTES AND RECOMMENDATIONS MADE BY THIS BOARD

CARRIER'S MOTION THAT THIS BOARD RECOMMEND THAT THE STRIKE DATE SHOULD BE CANCELLED, AND THE TWO CASES PENDING BEFORE THIS BOARD REMAIN BEFORE THE FIRST DIVISION OF THE NATIONAL RAILROAD ADJUSTMENT BOARD FOR DECISION

After the opening statements of the representatives of the engineers and the carrier, the carrier made a motion that this board recommend that the strike date be canceled and the two cases remain before the first division of the National Railroad Adjustment Board for a decision on its merits. It was the ruling of the board that the motion would be disposed of in our recommendations. At the close of all the evidence in the case the carrier renewed its motion.

The carrier filed ex parte submission in the two disputes before the first division of the National Railroad Adjustment Board before a strike vote was taken. The engineers filed their answer to that submission and the two cases are still pending before that board.

There can be no doubt that these disputes, in the course of orderly procedure, should be decided by the first division of that board. That was contemplated by the Railway Labor Act of 1934 and if the peaceful settlement of railroad labor disputes is to continue as it has existed in the past, we recommend that claims of the nature pending before us should be presented to the National Railroad Adjustment Board for decision. However, since this board believes that an emergency does exist, and in the interest of the uninterrupted flow of interstate commerce, this board has decided to overrule this motion and decide these cases on their merits.

Case No. 1 (No. 9 on strike ballot) : Claim of M. L. Morgan, fireman, for reinstatement with pay for time lost until such time as he is reinstated, account of being removed from firemen's seniority roster in contravention to application of rules of firemen's agreement and without proper investigation as provided for in existing agreements.

M. L. Morgan was first employed by the Carrier as a fireman on July 3, 1943. In the early part of August 1946, he was furloughed. On August 9, 1946, he was employed by the Teche Greyhound Lines and was from that date until September 11, 1946, in the driver's training school. On the latter date he went to work as a bus driver for that company and worked each day from September 11, 1946, through September 30 with the exception of September 24, 25, and 26. Morgan was continuously employed by the Teche Greyhound Lines from August 9, 1946, until the time of this hearing.

On August 19, 1946, the carrier notified Morgan to report for duty as he stood for service on yard firemen's extra board. The carrier did

not hear from Morgan and again on August 28, 1946, ordered him to report for work or to advise if he had any intentions of remaining in the carrier's service. Morgan did report on September 17, 1946, and was marked up on the extra board. He was called for a freight train service at 4:30 a. m. on September 18, 1946. The call boy was advised that he was out of town and it was later developed that he was driving a bus for the Greyhound Lines on that date. He was again marked up on the extra board and worked two nights, September 24 and 25, laying off on September 26, 1946. On October 3, 1946, he was advised by the master mechanic that the carrier had obtained information that he had accepted employment elsewhere and his name would be removed from the seniority roster if he did not intend to report for service. In Morgan's reply he requested a 60- to 90-day leave of absence, which request was denied by the carrier on October 9, 1946. In response to a request from General Chairman Wiggins, Brotherhood of Locomotive Firemen and Enginemen, his name was dropped from the seniority roster.

Although the general chairman of the Brotherhood of Locomotive Engineers knew that Morgan's name had been removed from the seniority roster on October 17, 1946, he did not file a protest with the carrier for Morgan until December 17, 1946. The engineer's brotherhood contended that the removal of Morgan's name from the seniority roster was in violation of article 50 of the firemen's agreement. It reads:

ARTICLE 50.

DISCIPLINE

(a) No fireman, hostler, or hostler helper will be discharged or disciplined, without a fair and impartial investigation, which will be made, ordinarily, within 10 days, or as soon thereafter as convenient. They will have the privilege of bringing to the investigation to assist them, any employee in engine service of their own selection.

If found blameless, they will be paid for the time lost. If discharged or disciplined, they will be furnished with a written statement showing the cause. If stenographic reports of investigation is made, copy will be furnished to the employee involved, or his representative, upon request.

GRIEVANCES

(b) No grievance will be entertained unless presented in writing to the superintendent, if the operating department is involved, or master mechanic, if the mechanical department is involved, within 45 days after its occurrence by the fireman, hostler, or hostler helper, or the committee of his choice. Firemen, hostlers, and hostler helpers shall have the right to appeal to the next ranking officer, provided such appeal be made in writing within 30 days after the superintendent or master mechanic, as the case may be, has rendered his decision to the firemen, hostler, hostler helper, or the committee representing him.

It is the contention of the carrier and the firemen's brotherhood that Morgan was not discharged, but that he voluntarily quit the service of

the carrier by taking a permanent job with the Greyhound Lines and his refusal to report for duty when ordered to do so by the carrier and, therefore, article 50 has no application in this dispute.

To this this board agrees. The facts above stated show that Morgan was continuously in the employ of the Greyhound Lines from August 9, 1946, to the present time and that he refused to report for duty to the carrier after his request for a leave of absence. This conclusively shows that Morgan voluntarily quit the service of the carrier and therefore article 50 is not involved in this dispute. This is the interpretation put upon the agreement both by the carrier and the firemen's organization, the only parties who have a right to interpret this agreement under article 54.

This board is of the opinion this claim is without merit.

Case No. 2 (No. 8 on Brotherhood of Engineers' strike ballot): Protest by engineers to agreement between carrier and firemen's brotherhood placing R. A. Harrison ahead of J. T. Cox on engineer's seniority list, effective July 1, 1945.

In January 1945 the carrier, being in need of additional engineers, notified five of its employed firemen to take the examinations necessary to qualify as engineers in line with practice on the road and the agreements then in existence with both brotherhoods. Among these five employees and the least senior of the group on the firemen's seniority roster were R. A. Harrison and J. T. Cox, in that order.

The carrier's personnel records reflect the following dates pertinent to our inquiry:

	Harrison	Cox
Employed.....	Sept. 2, 1942	Sept. 30, 1942
Started promotional examination.....	Feb. 1, 1945	Dec. 18, 1944
Qualified.....	Apr. 13, 1945	Jan. 31, 1945
First service as engineer.....	June 11, 1945	Feb. 5, 1945
Assigned seniority date on engineers' roster.....	Feb. 5, 1945	Feb. 5, 1945

The examination procedure required to be followed in order to qualify as an engineer and to be actually promoted consisted of a series of examinations including a written rules examination of over 1,000 questions, a practical mechanical examination and an oral review of the rules examination. The candidate is actually promoted to the position of engineer when he has made his first trip in that capacity. The language of article 35 subdivision (g) of the firemen's agreement and article 41 subdivision (g) of the engineers' agreement, both identical in wording and meaning establishes this promotion date clearly and unequivocally.

It further appears from the testimony that sometime after February 5, 1945, when Cox had made his first run as engineer and before

July 11, 1945, the date on which Harrison made his first run, A. T. Miller, superintendent of motive power for the carrier, in conversation with S. C. Park, general chairman of the engineers' brotherhood mentioned that Harrison had not as yet qualified for promotion to engineer and asked Park's opinion as to who should rank higher on the engineers' seniority roster when both were qualified and promoted, Cox or Harrison. Park replied "Cox." Thereafter the firemen's brotherhood and the carrier made an agreement in which among other things it was agreed to place Harrison ahead of Cox on the engineers' seniority roster. Pursuant to this agreement Harrison was listed ahead of Cox on the official engineers' seniority roster published on July 1, 1945. Immediately thereafter the engineers' brotherhood protested this decision and the making of the agreement with the brotherhood.

The engineers assert that Cox should have seniority over Harrison and rely on section 41 of the agreement between the carrier and their brotherhood as authority for this assertion. They also allege that the firemen's brotherhood have no legitimate interest in the question of seniority as between engineers and therefore any agreement pertaining to engineers' seniority made by the firemen's brotherhood could have no force or effect.

The Brotherhood of Firemen contend that (A) they may legitimately represent those engineers who are members of their organization and (B) they have a legitimate right to concern themselves with the circumstances surrounding the processes of promotion up to the point where the fireman being promoted actually assumes the status of engineer.

At the hearing the carrier's only position on this issue was that Harrison was properly placed ahead of Cox on the engineers' seniority roster.

We have stated above that firemen in the process of promotion are promoted to engineer as of the date of their first service in that classification.

Article 58 of the agreement between the carrier and the engineers' brotherhood provides as follows:

ARTICLE No. 58

REPRESENTATION

The general committee of adjustment of the Brotherhood of Locomotive Engineers will represent all locomotive engineers in the making of contracts, rules, rates, and working conditions, and the "interpretation thereof."

Article 54 and 54 (a) of the agreement between the carrier and the firemen's brotherhood provide as follows:

ARTICLE 54

RIGHT TO MAKE AND INTERPRET AGREEMENTS

The right to make and interpret contracts, rules, rates, and working conditions for locomotive firemen, hostlers, and hostler helpers is conceded to be in the regularly constituted committee of the Brotherhood of Locomotive Firemen and Enginemen and the general officials of the railroad.

REPRESENTATION

(a) The right of any engineer, fireman, hostler, or hostler helper, to have the regularly constituted committee of his organization represent him in the handling of his grievances, under the recognized interpretation placed upon the schedule involved by the officials of the company and the general committee making the same, is conceded.

It seems clear from a reading of these two articles that the right to represent all engineers in the making of contracts, rules, rates and working conditions and the interpretation thereof with the carrier is vested in the engineers' brotherhood, the duly designated collective bargaining agent of the engineers. It also follows that questions concerning rules and working conditions must be interpreted according to the terms of the contract governing the working conditions of the engineers, i. e., the agreement between the carrier and the engineers' brotherhood.

The question of which contract should govern here, however, is not decisive in this case because the applicable provisions of both the engineers' (art. 41) and the firemen's agreement (art. 35) on this property are identical in phraseology and intent except in two instances not pertinent to this discussion.

Because of the importance of these two provisions in the solution of this problem those paragraphs of article 41 of the engineers' agreement and article 35 of the firemen's agreement pertinent to this discussion are set forth immediately below:

ARTICLE 41

(Engineers)

(a) In the promotion of firemen to engineers, or hiring of engineers, when additional engineers are needed, the following regulations will govern:

(b) Firemen shall be examined for promotion according to seniority on the firemen's roster, and those passing the required examinations shall be given

ARTICLE 35

(Firemen)

(a) Firemen shall rank on the fireman's roster from the date of their first service as firemen when called for such service, except as provided in section K, and when qualified shall be promoted to positions as engineers in accordance with the following rules:

(b) Firemen shall be examined for promotion according to seniority on the firemen's roster, and those passing the required examinations shall be given

ARTICLE 41—Continued
(Engineers)—Continued

certificates of qualifications, and when promoted shall hold their same relative standing in the service to which assigned.

(c) If for any reason the senior eligible firemen or engineer to be hired, is not available, and a junior qualified fireman is promoted and used in actual service out of his turn, whatever standing is established by the junior fireman so used shall go to the credit of the senior eligible fireman, or engineer to be hired, provided the engineer to be hired is available and qualifies within 30 days. As soon as the senior fireman, or engineer to be hired, is available, as provided herein, he shall displace the junior fireman, who shall drop back into whatever place he should have held had the fireman to be promoted, or engineer to be hired, been available and the junior fireman not used.

(e) No fireman shall be deprived of his rights to examination, nor to promotion, in accordance with his relative standing on the fireman's roster, because of any failure to take examination by reason of the requirements of the railroad service, by sickness, or by proper leave of absence: *Provided*, That upon his return he shall be immediately called and required to take examination and accept proper assignment.

(g) Firemen having successfully passed qualifying examination shall be eligible as engineer. Promotion and the establishment of date of seniority as engineer, as provided herein, shall date from the first service as engineer when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority district while a junior engineer is working on the engineer's extra list, or holding a regular assignment as engineer on such seniority district.

ARTICLE 35—Continued
(Firemen)—Continued

certificates of qualifications, and when promoted shall hold their same relative standing in the service to which assigned. To qualify for examination for promotion, a fireman must first have fired 110,000 miles in road service or 1,000 days in yard service.

(c) If for any reason the senior eligible fireman or engineer to be hired, is not available, and a junior qualified fireman is promoted and used in actual service out of his turn, whatever standing is established by the junior fireman so used shall go to the credit of the senior eligible fireman, or engineer to be hired, provided the engineer to be hired is available and qualifies within 30 days. As soon as the senior fireman, or engineer to be hired, is available, as provided herein, he shall displace the junior fireman, who shall drop back into whatever place he should have held had the fireman to be promoted, or engineer to be hired, been available and the junior fireman not used.

(e) No fireman shall be deprived of his rights to examination, nor to promotion, in accordance with his relative standing on the fireman's roster, because of any failure to take examination by reason of the requirements of the railroad service, by sickness, or by proper leave of absence: *Provided*, That upon his return he shall be immediately called and required to take examination and accept proper assignment.

(g) Firemen having successfully passed qualifying examination shall be eligible as engineer. Promotion and the establishment of date of seniority as engineer, as provided herein, shall date from the first service as engineer when called for such service, provided there are no demoted engineers back firing. No demoted engineer will be permitted to hold a run as fireman on any seniority district while a junior engineer is working on the engineer's extra list, or holding a regular assignment as engineer on such seniority district.

It is clear to us from an examination of these provisions that in the matter of promotion from fireman to engineer the carrier was required to examine the firemen applicants according to their seniority on the firemen's roster and when the firemen were promoted they were to hold their same relative standing on the engineers' roster as they did on the firemen's roster.

Under paragraph (c) of both articles 35 and 41 provision is made where the junior fireman is promoted before a fireman his senior on the firemen's list. It was unquestionably the intent of the parties to both agreements to have such junior fireman, first promoted, set a seniority date for the senior fireman as yet unpromoted and when the senior fireman actually was promoted he was to displace the promoted junior fireman on the engineers' seniority list.

Therefore in the instant case when Cox was promoted on February 5, 1945, he established that same seniority date for R. A. Harrison on the engineers' seniority roster and when Harrison was promoted on June 11, 1945, he rightfully displaced Cox on the engineers' seniority roster; Cox thereby dropping down one place on the roster and directly under Harrison.

Some attempt was made by the engineers' brotherhood at the hearing to show that Harrison should have been penalized by being placed below Cox on the engineers' seniority list because of his delay in completing his engineers' examination. It is true that Harrison did not qualify as eligible for promotion until April 13, 1945, while the other four candidates were all qualified by January 31, 1945.

We cannot accept this assertion, however, for the following reasons: Nowhere in the engineers' agreement can we find any authority for penalizing a fireman candidate for promotion under circumstances as presented here because of a delay in qualifying for promotion.

Both agreements, however, make provision in identical language (arts. 35 (e) and 41 (e)) that no fireman will be deprived of his right to promotion because of any failure to take examination by reason of the requirements of the railroad service, by sickness, or by proper leave of absence.

Harrison testified that he was unable to see the proper carrier's representative in order to complete his examination although he made several efforts to do so. The testimony as a whole on this subject indicated that the delay was caused in part by Harrison's inaction and in part by the carrier's failure to supply him with the opportunity to complete the examination. Harrison's delay in qualifying may well have been caused by the "requirements of the carrier," thus making article 41 (e) of the engineers' agreement applicable to his case and thus specifically excusing the delay.

We find from an examination of all the evidence that the carrier in placing R. A. Harrison ahead of J. T. Cox on the engineers' seniority roster correctly applied the provisions of article 41 of the engineers' agreement, the document agreed by the parties to it, to be controlling in the settlement of disputes of this nature.

We further find that the firemen's brotherhood properly filed claim or grievance on behalf of its engineer member, but such claim or grievance, concerned with the working conditions of an employee classified as an engineer must be disposed of under the terms of the agreement between the carrier and the engineers' brotherhood.

RECOMMENDATIONS

Since both of the claims of the Brotherhood of Locomotive Engineers are without merit, this board recommends that the strike theretofore authorized by the members of that brotherhood on the carrier's property be canceled.

Respectfully submitted.

ERNEST M. TIPTON, *Chairman.*

HARRY H. SCHWARTZ, *Member.*

JOHN T. McCANN, *Member.*

ATLANTA, GA., *November 1, 1947.*