

Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

**APPOINTED JANUARY 14, 1948
PURSUANT TO SECTION 10 OF
THE RAILWAY LABOR ACT AS
AMENDED**

**To investigate an unadjusted dispute
between the Akron & Barberton Belt
Railroad and certain of its employees
represented by the Brotherhood of
Railroad Trainmen**

(NMB Case No. A2665)

**AKRON, OHIO
JANUARY 29, 1948**

AKRON, OHIO, *January 29, 1948.*

THE PRESIDENT,
The White House,

DEAR MR. PRESIDENT: Herewith is submitted the report of the emergency board, appointed by you by Executive order of January 13, 1948, to investigate and report respecting an unadjusted dispute between the Akron & Barberton Belt Railroad and certain of its employees represented by the Brotherhood of Railroad Trainmen.

Respectfully submitted.

ROBERT W. WOOLLEY, *Chairman.*
HUSTON THOMPSON, *Member.*
WALTER GELLHORN, *Member.*

(II)

EXECUTIVE ORDER NO. 9923

CREATING AN EMERGENCY BOARD TO INVESTIGATE THE DISPUTES BETWEEN THE AKRON & BARBERTON BELT RAILROAD AND THE BROTHERHOOD OF RAILROAD TRAINMEN

Whereas a dispute exists between the Akron & Barberton Belt Railroad, a carrier, and certain of its employees represented by the Brotherhood of Railroad Trainmen; a labor organization, and

Whereas this dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

Whereas this dispute, in the judgement of the National Mediation Board, threatens substantially to interrupt interstate commerce within the State of Ohio to a degree such as to deprive that portion of the country of essential transportation service;

Now, therefore, by virtue of the authority vested in me by section 10 of the Railway Labor Act, as amended (45 U. S. C. 160), I hereby create a board of three members, to be appointed by me, to investigate said dispute.

No member of the said board shall be pecuniarily or otherwise interested in any organization of railway employees or any carrier.

The board shall report its findings to the President with respect to the said dispute within thirty days from the date of this order.

As provided by section 10 of the Railway Labor Act, as amended, from this date and for thirty days after the board has made its report to the President, no change, except by agreement, shall be made by the Akron & Barberton Belt Railroad, or its employees, in the conditions out of which the said dispute arose.

HARRY S. TRUMAN.

The WHITE HOUSE,
January 13, 1948.

(1)

**REPORT OF EMERGENCY BOARD APPOINTED JANUARY
14, 1948, UNDER SECTION 10 OF THE RAILWAY LABOR
ACT 1926, AS AMENDED**

**In re: Akron & Barberton Belt Railroad Co. and the Brotherhood of
Railroad Trainmen**

The emergency board appointed January 14, 1948, by the President, pursuant to the provisions of the Railway Labor Act, as amended, and in accordance with the Executive proclamation of January 13, 1948, to investigate and report its findings respecting matters in dispute between the Akron & Barberton Belt Railroad on the one hand, and the Brotherhood of Railroad Trainmen on the other, convened in Judge Doyle's courtroom of the Summit County Courthouse, in Akron, Ohio, at 10 a. m., on January 20, 1948.

All of the members of the board consisting of Huston Thompson, Washington, D. C.; Walter Gellhorn, New York City; and Robert W. Woolley, Washington, D. C., were present. The board elected Robert W. Woolley as its chairman, and confirmed the appointment of Ward & Paul as official reporters.

Appearances on behalf of the Brotherhood of Railroad Trainmen were as follows: William E. B. Chase, vice president, Cleveland, Ohio; and H. M. Drillien, general chairman, Akron, Ohio, appearing for the Brotherhood of Railroad Trainmen; also Willard Millhoff, general chairman, Akron, Ohio, appearing for the Brotherhood of Locomotive Firemen and Enginemen. For the carrier: Edward A. Kaier, and J. P. Canny, both of Pittsburgh, Pa., and Andrew P. Martin, Cleveland, Ohio.

Public hearings were held commencing on January 20, 1948, and were concluded on January 23, 1948. During the course of these hearings evidence was submitted, 13 exhibits were presented, and statements and arguments were made to the board. A record of 560 pages was made. During the hearings themselves, the parties were brought into agreement concerning five matters in dispute. At the conclusion of the hearings the board held informal conferences with the parties, earnestly seeking to aid them in adjusting their single remaining difference, but such efforts were in vain.

On the basis of the evidence, exhibits, statements, and arguments, we based the following report, findings, and recommendations:

BACKGROUND OF THE PRESENT CONTROVERSY

On November 3, 1946, the Brotherhood of Railroad Trainmen served formal notice of desire to negotiate a general revision of the schedule of working rules which had been in force on the Akron & Barberton Belt Railroad since 1929.

Discussions between the brotherhood and management representatives proceeded at intervals during the following 9 months. Many matters in issue were resolved through the parties' unaided negotiations, and the tentative agreements as to these topics were confirmed and made final during the present proceedings (transcript pp. 23-24).

In the autumn of 1947, however, a number of unreconciled differences led to a call for the services of the National Mediation Board. Mediation conferences were conducted intensively from November 12 to November 20, 1947, but at their conclusion there remained six rules upon which no agreement had been reached. A final unsuccessful meeting between the parties occurred on January 2, 1948. Thereafter, and in conformity with applicable provisions of law, the brotherhood gave notice of a strike, which became effective on January 8 and lasted through January 13, 1948. On that date, the President, by Executive order, proclaimed that the dispute threatened substantially to interrupt interstate commerce within the State of Ohio and thus to deprive that portion of the country of essential transportation services. Accordingly, he created the present emergency board to investigate and to report its findings. As contemplated by section 10 of the Railway Labor Act, as amended, the strike was promptly terminated upon issuance of the President's order.

Both parties have freely cooperated with the emergency board and have fully availed themselves of the opportunity afforded them to present evidence and argument before this disinterested public body.

During the proceedings before the emergency board, the parties were able to compose their differences concerning five of the six rules which had given rise to the emergency. These matters were thus withdrawn from the area of controversy. (See transcript pp. 138-139, 140, 160, 161-163, 515-516.) It is unnecessary, therefore, to make comment upon them, other than to note the emergency board's gratification that renewed collective bargaining under its auspices so successfully narrowed the parties' dispute. It is appropriate to note, too, that throughout the board's proceedings both parties maintained a high degree of cordiality, courtesy, and candor which greatly facilitated the board's work.

THE ISSUE BEFORE THE BOARD

The remaining issue before the emergency board arises from the request of the brotherhood for an "air hose rule, or arbitrary" reading as follows:

When yardmen are required to couple air hose in connection with their switching, or in handling of their trains or cut of cars, they shall be allowed an arbitrary payment of one (1) hour for such service, except that, yardmen may, without arbitrary payment, couple air hose between engine and head car, between caboose and rear car, at crossings which have been cut for rail, highway, or street traffic, between cars where necessary double is made from one track to another, or between cars when the train or cut of cars have parted.

No counterproposal has been advanced by the company at any time, either in informal negotiations or in the proceedings before this board.

OPINION

The issue here involved grows out of the following circumstances:

The Akron & Barberton Belt Railroad, a freight line, has been in operation since 1892. Its main track connects Akron and Barberton, Ohio. The line serves a number of large manufacturing plants in the vicinity of those cities by hauling their ingoing and outgoing freight to and from four trunk-line roads. The trunk-line roads own jointly all the stock and assets of the Barberton Belt. During 1947 the Barberton Belt handled 130,599 loaded and unloaded cars. All the car movements on the Barberton Belt are handled by seven train crews. Each crew includes a freight conductor and two brakemen, who are generally known as yardmen and whose bargaining agent is the Brotherhood of Railroad Trainmen. These are the only employees involved in the present controversy. They have a seniority roster which is similar to but in no way connected with the trunk-line rosters. They receive wages which are identical with those for a like position on the connecting trunk lines.

Ever since the creation of the Barberton Belt the respective trunk lines have delivered their cars to it at their respective junctions with its tracks. The Barberton Belt employees then attach the cars to a Barberton Belt locomotive and deliver them to their respective destinations on the 23-mile Belt line. Every car is equipped with air hose, which can be coupled or uncoupled by connecting the ends of the hose of one car to that of another. The air hose on most of the cars is coupled by trunk-line operators before delivery of the cars to the Barberton Belt, but some are not.

In delivering the cars to their respective destinations, the Barberton Belt employees must couple and recouple the cars as the situation requires, and in doing so they must also connect or reconnect the air

hose on numerous occasions. The same holds true when receiving cars from the manufacturing plants to be placed on the Belt line for delivery to the trunk lines.

The evidence shows that no assistance in coupling or uncoupling air hose has ever been given by the trunk-line employees to Barberton Belt employees on the Belt line premises. This work has always been done exclusively by the Barberton Belt conductors and brakemen (yardmen) as a part of their regular duties in moving cars. On only one occasion has the Barberton Belt ever employed a carman or inspector in conjunction with its train service. His position was discontinued in 1932 and no such position has been created or filled thereafter. While the single carman gave some assistance with respect to the coupling of hose at one of the interchanges on the Barberton Belt, all the rest of this work was performed at all times by conductors and brakemen.

The employees take the position that the coupling of hose, though done by them during their 8-hour employment, is additional work and not a part of their job; and, therefore, they should be reimbursed for it. Yet, it is conceded that the air-hose work has been done by the yardmen (conductors and brakemen) on the Barberton Belt since 1892 without receiving additional compensation on this account.

They cite in support of their position a number of decisions by the National Railroad Adjustment Board. All of these cases, however, arise out of circumstances where a rule between the carrier and the employees was already in existence, where the conductor or brakeman was not required to do the coupling when carmen were employed or available for this and other purposes. In most of such cases, though not all, the decisions have been to the effect that the employee doing the coupling of the air should be reimbursed under the working rule then in existence.

It should be noted that all these awards were in cases where a rule existed; where there had been a violation of it, and where the complaining employee had been required to do the work for which the rule supplied other employees.

In contrast, however, the evidence in the instant case shows that there is no such rule, and that the air coupling has always been done by the conductor, or brakeman, as part of his duties.

What, therefore, the employees are here asking for, and they so admit, is not an interpretation of a rule already in existence that has been allegedly violated, but they are asking for a rule to be created whereby they shall receive an "arbitrary" or additional pay for work which they have always done in conjunction with the movement of cars, for which they have received no extra compensation, and for

which no other employees have been provided. Briefly, they are not asking for the interpretation of a rule such as in the Adjustment Board cases heretofore referred to. They are requesting the creation of a new rule, for without it, they assert, they are being discriminated against.

The only other case offered in support of the brotherhood's request for a rule is one that has recently been compromised between the brotherhood and the Pittsburgh Chartiers & Youghiogheny Railway operating principally on Neville Island on the Ohio River just south of Pittsburgh, Pa. The physical and manpower circumstances, according to the record, are very similar to those in the instant case. As in the present case a belt line was involved. The number of employees were approximately the same. The question was whether they should be paid for the coupling of the air hose on the cars at the same time that they were doing the work of coupling the cars, and there were no other employees supplied by the carrier to do the hose coupling. According to the record, the carrier and the employees mediated the problem. The employees of the Pittsburgh Chartiers & Youghiogheny were pressing a number of claims against the carrier. The parties finally mutually agreed that all the pending claims against the carrier would be withdrawn and the carrier would agree to pay an "arbitrary" or additional pay for the air-hose coupling services, of three fourths of an hour's pay per day for each employee doing air coupling.

It will be seen that there, however, the result reached was through the give and take and trading of economic considerations, and not, as in the instant case, requesting the President of the United States to support the creation of a new rule for additional pay, where no new work is involved, and where the employees were not giving up any claims in return for such a rule.

This board is therefore presented with a situation where there is no precedent to guide it. Under these circumstances it becomes important and necessary to analyze the claim of the employees. It may be done by the suggestion of questions, the answers to which are found in the evidence of this case.

1. Is the coupling of the air on the cars in question in this case new work? The answer is no, according to the evidence.
2. Is the work of coupling of the air that for which the carrier has employed others? The answer is no.
3. Is it more hazardous work than other work which the employees have to do among freight cars?

Answer. The record shows that during the past 20 years of the carrier's existence neither it nor its physician has any record of

any reportable claim for injury in the coupling of hose (a reportable claim is one involving 3 days or more of disability).

A witness for the brotherhood testified that men were sometimes bruised by the swinging back and forth of the rubber hose when it was being jointed. The same witness gave an instance of an employee who was seriously injured prior to 1928. Finally, the record does not show any claim of any kind of any injuries in this line of work on the carrier's records during the last 20 years.

4. Does the hose coupling increase the amount of work of the employee?

Answer. The testimony shows that during the regular 8-hour period, hose coupling is work which follows almost immediately upon the coupling of a car, and that the person coupling the car also does the coupling of the hose. There is a difference of opinion as to how many times the employee is involved in the coupling of air hose during his 8-hour day. One witness for the employees testified that he averaged from 30 to 40 couplings of the air per 8 hours. The carrier, on the other hand, testified that the coupling done by an employee during the work period would be about 10 times.

From the questions and answers based on the testimony and the record, it would appear that the work which these employees have been doing is not additional work. There is here no rule allowing for additional compensation where there are employees that could do the coupling other than the conductor and brakeman. There was no one supplied by the carrier to do such work and thus relieve the conductor and brakeman from it. This being the situation, the claim appears to resolve itself into one for increased pay for each 1 of the 23 men employed as conductors or brakemen on the basis of 1 hour's additional pay per man per day.

According to the testimony of the carrier there are many locations on the railroads of the United States where freight conductors and brakemen couple both cars and air as a part of the day's work without extra pay. At such points there is no rule at all affecting the status of the freight conductors and brakemen as here proposed, and there is no inspector or carman delegated to do this work.

If the brotherhood's present request for an hour's "arbitrary" were granted, the added annual cost to the Barberton Belt would be approximately \$10,000, or roughly one-fifth of its average net income during the past 20 years. The issue before us has implications, however, which far overshadow the initial impact of a decision favorable to the brotherhood. If this emergency board were to recommend a

rule which liberalized the present prevailing practice regarding air-hose payments, one might reasonably anticipate demands for similarly liberalized rules on many other railroad properties. To relax existing conditions in the way the brotherhood seeks would be, in effect, to grant a substantial wage increase for doing a task which is performed, as indeed it has always been performed when carmen are not available, as a portion of the yardman's normal workday. Whether or not a wage increase is warranted by economic circumstances is not the question before this emergency board. Nothing we have said is to be deemed an expression of opinion upon that problem.

THE BOARD'S FINDING

The board, upon the whole record, finds that the brotherhood's present claim cannot be supported by a reference to the practice which generally prevails on American railroads, or by assertion that the Akron & Barberton Belt Railroad conductors and brakemen (yardmen) are required to perform work which is outside the scope of the yardmen's normal duties.

THE BOARD'S RECOMMENDATION

The emergency board, pursuant to section 10 of the Railway Labor Act, as amended, respectfully advises the President that—

In view of the record and testimony in this case the board recommends against the creation of the rule requested by the Brotherhood of Railroad Trainmen, for an arbitrary payment with respect to air-hose work, as not warranted by any special conditions obtaining upon the Akron & Barberton Belt Railroad, and as not consistent with prevailing practices in the railroad industry.

Respectfully submitted.

ROBERT W. WOOLLEY, *Chairman.*

HUSTON THOMPSON, *member.*

WALTER GELLHORN, *member.*

JANUARY 29, 1948.