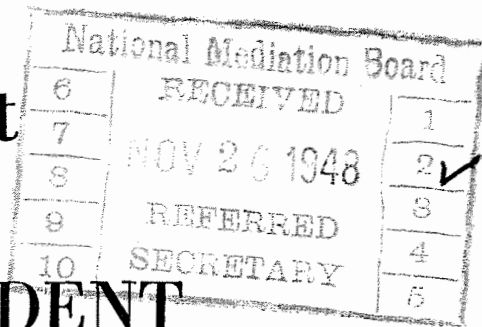


Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD



APPOINTED SEPTEMBER 10, 1948
BY EXECUTIVE ORDER 9996
PURSUANT TO SECTION 10 OF
THE RAILWAY LABOR ACT AS
AMENDED

To investigate an unadjusted dispute concerning
a grievance involving the Public Belt Railroad
Commission for the City of New Orleans and
certain of its employees represented by the
Brotherhood of Locomotive Firemen and En-
ginemen and the Brotherhood of Railroad
Trainmen

NEW ORLEANS, LOUISIANA
SEPTEMBER 18, 1948

LETTER OF TRANSMITTAL

NEW ORLEANS, LA., *September 18, 1948.*

THE PRESIDENT,

The White House.

MR. PRESIDENT: The Emergency Board appointed by you September 8, 1948, by Executive Order 9996 under section 10 of the Railway Labor Act, as amended, to investigate a grievance controversy involving the Public Belt Railroad Commission for the city of New Orleans and certain of its employees represented by the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen, has the honor to submit herewith its report on the facts in dispute.

Respectfully submitted.

HARRY H. SCHWARTZ, *Chairman.*

FLOYD MCGOWN, *Member.*

A. LANGLEY COFFEY, *Member.*

This Emergency Board, consisting of Harry H. Schwartz, chairman, Floyd McGown, and A. Langley Coffey, members, was appointed by the President, pursuant to the provisions of section 10 of the Railway Labor Act. The emergency precipitating the establishment of the Board resulted from the announced intention of certain employees of the Public Belt Railroad Commission, represented by the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen, to withdraw from service to enforce their demands for the reinstatement of a fireman discharged by the carrier and for payment of a money award to such employee under an award of the First Division of the National Adjustment Board.

Upon being apprised by the National Mediation Board of the controversy and that the controversy threatens to interrupt commerce, the President, by Executive order dated September 8, 1948, created an Emergency Board, and directed the members to investigate the dispute and report its findings.

EXECUTIVE ORDER

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE PUBLIC BELT RAILROAD COMMISSION FOR THE CITY OF NEW ORLEANS AND CERTAIN OF ITS EMPLOYEES

Whereas a dispute exists between the Public Belt Railroad Commission for the City of New Orleans, and certain of its employees represented by the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen, labor organizations 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 judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce within the State of Louisiana to a degree such as to deprive that state 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 the 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 Public Belt Railroad Commission for the City of New Orleans or its employees in the conditions out of which the said dispute arose.

HARRY S. TRUMAN.

THE WHITE HOUSE,

September 8, 1948.

In accordance with the President's order, the Board convened in New Orleans, La., Wednesday, September 15, 1948, for the purpose of receiving testimony and argument from the parties involved in the dispute. Messrs. Ward and Paul of Washington, D. C., were appointed as reporter. Public hearings were held on September 15, 16, 17, 1948, in the auditorium of the International House in New Orleans, and from September 15 to 17, effort was made to secure an agreement through mediation of the issues in dispute. Such efforts were unavailing. The Board, thereupon, went into executive session to consider the testimony and exhibits and prepare its report.

APPEARANCES

For the carrier: Michel Provosty, Esq., general counsel; Ed. J. Garland, general manager; and W. J. Germann, secretary-treasurer, representing the Public Belt Railroad Commission for the city of New Orleans.

For the employees: Henry J. Read, Esq., and Edward F. Wegmann, Esq., of Dart, Guidry & Price, 1008 Canal Bank Building, New Orleans, La., representing the Brotherhood of Locomotive Firemen and Enginemen and Brotherhood of Railroad Trainmen. R. J. Tillery, vice president, Keith Building, Cleveland, Ohio; George H. Larue, general chairman, New Orleans, La., Brotherhood of Locomotive Firemen and Enginemen. V. W. Satterwhite, vice president, Standard Building, Cleveland, Ohio; Albert Roth, general chairman, New Orleans, La., Brotherhood of Railroad Trainmen.

At the beginning of the hearing the chairman asked the parties whether they were willing to arbitrate the matter in dispute. Counsel for the carrier stated the carrier had previously offered to arbitrate the dispute and that the carrier was now ready and willing to arbitrate the dispute. Counsel of the employees stated that the time for arbitration had passed, that the proceedings before the Adjustment Board were in effect an arbitration, and for these reasons the employees declined to enter into an arbitration agreement.

THE POSITIONS

At the suggestion of the Board, counsel for the parties made opening statements covering the matter in dispute. Mr. Wegmann advised the Board:

The dispute has been presented to the Railroad Adjustment Board, who, after hearing the facts in the case, made an award in favor of one Paul Hennessey, a member of the Brotherhood. That award called for him to be reinstated, to receive all back pay.

After the award of the Adjustment Board was rendered, the Brotherhoods called upon the Railroad to enforce the award. They failed to enforce the award, and have refused to do so.

Subsequent to that, the National Mediation Service stepped in, and the National Mediation Service having failed to settle the dispute, this Emergency Board was created by order of the President of the United States.

Very briefly, that is the matter which we have here.

As to the matter in dispute, counsel for the carrier stated:

On this particular controversy, this is what arose—I shall seek to be brief. An accident occurred on the Public Belt Railroad. Two trains came together. The train was under the management—the one was a stationary train and the other was in motion. The train in motion, Mr. Paul Hennessey, who was the engineer and is the gentleman over whom—I beg your pardon; who was a fireman and who was, at the moment, the engineer on this train, testified in the usual hearings had before the various officials of the Public Belt, that the accident happened in such and such a manner.

It was thought that he was, perhaps, wrong about that. A second hearing was had and he then said that he was in error in the first one, and that the accident happened in a different way. That, of course, will be reflected here by testimony.

Proper hearings were had before the various officials and Hennessey was dismissed. I won't go into details as to our defenses.

The matter was submitted to the First Division of the Adjustment Board and the Adjustment Board decided that Hennessey should be restored to service with seniority unimpaired and with back pay.

There were then further conferences on the property with representatives of the Brotherhood. At that time, the chairman of the Brotherhood representing the Engineers came to the conferences. As far as we knew, we had no dispute of any kind. We had no dispute insofar as this award was concerned with the Engineers—I beg your pardon; the Trainmen; with the Trainmen. The Trainmen are here today and we, the Public Belt, do not know why they are here today. I believe that the Executive order, which I have not seen, but I gather the Executive order has referred to your Board the award made by the Adjustment Board which award states in so many terms what it is.

The CHAIRMAN. I don't think you will find that says what it is, or what you say. It says—under section 10 it says there is a threatened interruption to interstate traffic; traffic in the State of Louisiana. As I stated before, we do not know what it's about.

Mr. Read further outlined the employees' position in the case as follows:

Mr. READ. Yes. The position of the Brotherhoods in this hearing can be very simply stated. It is this: Mr. Provosty would have us retry before this Board all of the issues which have been presented to and resolved by the Adjustment Board. Now, it is not our intention to do that. The Adjustment Board has heard this case, has had the benefit of all the testimony which was submitted to it, and arguments, and has made a finding. Now, the dispute which we are here about is not—does not arise from the correctness or the incorrectness of the award by the Adjustment Board, but rather, from the refusal of the Public Belt Railroad to carry out the terms of that award. We would like to make ourselves clear on that point. And so, I will repeat it.

The position of the Brotherhoods is that this dispute arises, not from the correctness or incorrectness of the award by the Adjustment Board, but, rather, from the refusal of the Public Belt Railroad to put into effect the terms of that award.

Now, that being the case, we are going to have very little to say by way of initiating action at this hearing. We are going to reply to Mr. Provosty when we think it appropriate so to do, but we are not going to take the position that we have any burden of establishing the correctness of the award before the Adjustment Board.

Mr. McGOWN. Counsel, are we to understand, then, that your position is one that the facts involved, out of which this dispute arose, are not properly before this Board? That what is before this Board is only the question of whether or not the company should have complied with the award of the Adjustment Board?

Mr. READ. That's right, sir.

Mr. McGOWN. That is your position?

Mr. READ. That's right, sir.

THE EVIDENCE

Counsel for the employees read the award No. 12130, docket 2205, by the First Division of the National Railroad Adjustment Board, dated May 4, 1948, in the dispute between Brotherhood of Locomotive Firemen and Enginemen and the New Orleans Public Belt Railroad, sustaining the claim of Fireman Paul Hennessey for reinstatement as firemen and hostler with seniority unimpaired and pay for all time lost for alleged falsification of facts in an investigation held July 17, 1946; and also the order of May 4, 1948, by the Adjustment Board directing the New Orleans Public Belt Railroad to the same, to which Hennessey is entitled under the award on or before June 3, 1948.

The award and the order were received in evidence. Thereupon, after introducing the award and order, counsel for the employees advised the Board they had no further evidence or testimony to offer and rested.

In opening the case for the carrier, Mr. Provosty called Ed. J. Garland, general manager of the carrier, who being sworn testified at length and identified many documents which were received in evidence, over objection made by counsel for the employees.

No further evidence was offered by either party and argument ended the hearing.

Counsel for employees have insisted, in this case, that the burden on the carrier is to show why it does not reinstate the discharged employee and pay him for time lost since his discharge, but counsel for the employees, at the same time, object to all the evidence carrier introduced to show why the award of the Adjustment Board has not been satisfied.

In our opinion, a review of the testimony presented to the First Division of the Adjustment Board, and a review of the findings of

that Board, would be of no help in solving this dispute. As to the contention of the Brotherhoods that this Board has no right to review the testimony or the findings of the First Division of the Adjustment Board, we would say this Board, as constituted, not only has a right but a duty to review testimony, to obtain new testimony if necessary, and to review any and all previous proceedings had in this dispute, referred to it as a "Presidential Board," where such review would be of help to it.

It remains a fact that an award was made and the carrier notified to reinstate the aggrieved employee with seniority unimpaired and with back pay for all time lost as the result of his wrongful discharge.

The carrier, while professing its willingness to reinstate the aggrieved employee, has not done so. Neither has it paid the money award. When payment is not made the Railway Labor Act, paragraph (p), section 3, authorizes the employee to file a civil suit in the proper district court of the United States to secure payment of the award. The employees elect not to avail themselves of this remedy, but to seek payment by resort to their "economic power" to strike and tie up the railroad. That action, on the part of the employees, is the emergency which induced the President to set up this present Emergency Board.

It becomes important to consider the magnitude of this emergency. At the request of the Board the general manager of the New Orleans Public Belt Railroad testified:

Mr. PROVOSTY. We would be happy to furnish such a statement and I will ask Mr. Garland to answer the question propounded by the Board. Tell us the operation of the Public Belt; the line-haul connection, the port of New Orleans, port of embarkation, and that phase of operation insofar as it affects the economic set-up of this group and the economic set-up of the country as a whole.

Mr. GARLAND. The Public Belt serves exclusively—rather, exclusively serves all of the public docks in the city of New Orleans. It serves 138 industries along its line, which is principally along the water front and—well, the entire water front, including the industrial canal. It exclusively serves the grain elevator, the cotton warehouse, the New Orleans port of embarkation.

As I have said before, all of the public docks. The public docks will accommodate 64 vessels.

It interchanges freight between all of the railroads and the points on its line.

The CHAIRMAN. Would you mention the railroads?

Mr. GARLAND. The Illinois Central, the G. M. & O., the L. & A., Kansas City Southern, the Texas Pacific, Missouri Pacific, T. P.-M. P. Terminal, the Southern Railroad, and the L. & N. Railroad, and the Southern Pacific.

It also makes connections for the freight moving from the lower coast railroad and that is a subsidiary of the Missouri Pacific that serves the west side of the river, Braithwaite, a port on the west side of the river, and it connects with the Louisiana Southern a short line on this side of the river; goes down towards the mouth of the river through the Southern Railroad.

Mr. McGOWN. By that statement do you mean that it switches all of the cars between these different railroads that you have named, and from these railroads to the wharves and ports or from the wharves and ports back to these various railroads?

Mr. GARLAND. Yes, sir. It acts as an intermediate in very few instances. We do act as an intermediate railroad between the Texas & Pacific and the L. & A. The Texas & Pacific has a lot of industries on the west side of the river. They bring cars over to us that are destined to the L. & A., because they have no direct connection with the L. & A. Railroad.

We serve the G. M. & O.—as an intermediate for the G. M. & O., and the I. C. Railroad.

I forgot to mention in the number of railroads the Gulf Coast Line. It is a subsidiary of the Missouri Pacific that operates into New Orleans over the I. C. Railroad.

* * * * *

Mr. PROVOSTY. Mr. Garland, tell us more about what is the port of embarkation.

Mr. GARLAND. The port of embarkation, as you know, gentlemen, is a branch of the United States Army. It presently is supplying all of the outposts in the Caribbean and South Atlantic. It is also handling a lot of relief cargo.

Mr. PROVOSTY. Is it served by any other—

Mr. GARLAND. It is not served by any other railroad. None of the industries that we serve, with the exception of one or two warehouses, are served by any other railroad but the Public Belt Railroad.

Mr. McGOWN. Are any of the ports—rather, any of the boats that come in from foreign countries, or coastwise boats that come into the docks at New Orleans, are they served by any other railroad?

Mr. GARLAND. Except those that go to the Stuyvesant docks of the Illinois Central Railroad; takes a capacity of about three ships, or Southern Pacific dock on the west side of the river that has a capacity of one small ship; the Texas & Pacific docks on the west side of the river that have a capacity of three or four ships, and the Chalmette slips of the Southern Railroad that have a capacity of about three or four ships. All of the other ships use the public docks, and under the law, we are the only ones who can serve the public docks.

The CHAIRMAN. What is the capacity of the public docks?

Mr. GARLAND. Sixty-four ships.

Mr. COFFEY. What are some of your industries that the railroad serves exclusively?

Mr. GARLAND. The Lone Star Cement, Henderson Sugar Refinery, the Flintkote Co., manufacturing roofing, Rickert Rice Mill, Asbestone Corp., manufacturers of roofing and siding, and about—well, I suppose George Larue could tell me. * * *

About 60 wholesale grocery and food houses in our commercial district. There must be at least 60. The Public Commodity Warehouse, the Cotton Trade Warehouse, stores cotton. The grain elevator; I have mentioned that. I can furnish a list of all the—I will furnish you a list of all of the industries. I will put that in as an exhibit, if you care to have it.

Mr. Garland further testified that the port handles about 300 cars of bananas weekly; that foreign vessels bring to the port mahogany logs, coffee, raw sugar, burlap from India, sisal from Mexico, blackstrap molasses. Also, that the Belt service exports manufactured goods, about 120 cars a day, lumber, cotton, and cotton-seed products,

an enormous amount of flour, grain, corn, soybeans; the Belt handles normally 27,000 cars a month.

Carrier's exhibit 7 is a copy of a petition for declaratory judgment filed and now pending in the Civil District Court for the Parish of Orleans, in which the Public Belt Railroad Commission for the city of New Orleans is plaintiff and Paul Hennessey, Brotherhood of Locomotive Firemen and Enginemen, and George H. Larue, general chairman of the Brotherhood, et als., are defendants. The petition seeks judgment that plaintiff is not required to pay the award until the procedures of the Railway Labor Act have been taken by defendants; avers that defendants, by veiled suggestions, threaten to apply sanction contrary to law to compel payment, and seeks the aid of the court, evidently by injunction to prevent a strike. The defendants have filed "exceptions" to the suit now pending.

DISCUSSION

This Board has considered carefully the evidence and arguments of counsel in this case. The positions of the parties are clear. The carrier says it will not pay the money award until the employee complies with the Railway Labor Act and gets a judgment in his favor, but will submit the issue to a board of arbitration for final decision, and will also pay any sum found due on any final judgment in any court.

The employees say they will not file any suit in a district court of the United States under the provisions of the Railway Labor Act to secure payment of an award by the Adjustment Board, but will resort to their "economic power" by strike to tie up the road until the award is complied with in all respects.

For several days now, and at the writing of this report, the members of this Emergency Board, seeking through daily conferences, separately, with counsel and employees, and with counsel for the carrier and its general manager, by mediation to arrive at a settlement of this emergency and avoid the dislocation and prostration of a transportation system which involves the welfare of this community, the welfare of the public throughout the Nation, and jeopardizes the national interests here and abroad.

Based on all of the facts presented and the reasonable inferences to be drawn therefrom, this Board is of the opinion that neither the carrier nor the brotherhoods have shown the proper regard for the public welfare, and neither has demonstrated a willingness to comply fully with the Railway Labor Act. The carrier has not made effective any part of the award made by the First Division of the Adjustment Board. There is no justification, in our opinion, for its failure to immediately reinstate the aggrieved employee with full seniority

rights in compliance with the enforcement order of said Adjustment Board.

Under the Railway Labor Act, that part of the award is, in the opinion of this Board, final and binding. Whatever justification the carrier may have for taking issue with the monetary provisions of the award, the aggrieved employee should have been restored to the seniority roster and made subject to call without equivocation on the part of the carrier from and after May 4, 1948.

On the other hand, the Brotherhoods' position on this controversy is questionable by its refusal to invoke the plain provisions of the Railway Labor Act, which gives it redress through the courts for enforcement of the monetary provisions of the award of the Adjustment Board.

The Brotherhoods, contrary to the public's interests, thereby avoids a final determination of the matter in accordance with the plain congressional intent that the monetary awards, under the Railway Labor Act, should be subject to review by the courts.

The parties cannot agree on the amount of money involved in the award, and, to our suggestion of some compromise on what is a difference of a few thousand dollars, each side balks on the basis of the "principle" involved. The final decision on the part of the carrier has been referred to the Commission of 16 businessmen who control the affairs of the Belt under the provisions of the Constitution of the State of Louisiana, and the Commission's decision will be made before this report reaches Washington. If a settlement is secured, we will wire the National Mediation Board and the President.

The length of this report is deemed necessary to inform the President of the facts and what is involved if the operations of the Public Belt Railroad cease to function.

Respectfully submitted.

HARRY H. SCHWARTZ, *Chairman.*

FLOYD MCGOWN, *Member.*

A. LANGLEY COFFEY, *Member.*

LETTER OF TRANSMITTAL

NEW ORLEANS, LA., *September 23, 1948.*

THE PRESIDENT,

The White House.

MR. PRESIDENT: The Emergency Board appointed by you September 8, 1948, pursuant to section 10 of the Railway Labor Act to investigate a grievance controversy involving the Public Belt Railroad Commission for the city of New Orleans and certain of its employees represented by the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen, had the honor to submit its report dated September 18, 1948, on the facts in dispute, and has the honor to herewith submit a supplemental report on the final settlement of the emergency through further mediation.

Respectfully submitted.

HARRY H. SCHWARTZ, *Chairman.*

FLOYD MCGOWN, *Member.*

A. LANGLEY COFFEY, *Member.*

SUPPLEMENTAL REPORT

The original report of this Emergency Board dated September 18, 1948, on pages 3 to 5 recites the President's Executive Order No. 9996 of date September 8, creating an Emergency Board and the appointment of the members of such Emergency Board on September 10.

Immediately following September 18, the parties to the dispute having been advised the report had been made, requested the Emergency Board to assist them in further efforts to reach agreement and avoid the pending strike. Daily conferences followed, but no solution was found until after our report of September 18 was delivered to the White House, and hence the necessity for this supplemental report.

On September 22, 1948, the following agreement was made:

NEW ORLEANS, LA., *September 22, 1948.*

Through the mediation efforts of the Emergency Board, the parties hereto have settled the Hennessey dispute as follows:

1. Reinstate Hennessey with seniority.
2. The amount of back pay to be paid Hennessey shall be \$7,500.

(Signed) BROTHERHOOD LOCOMOTIVE FIREMEN AND ENGINEMEN,

By R. J. TILLERY, *Vice President.*

GEORGE H. LARUE, *General Chairman.*

BROTHERHOOD OF RAILROAD TRAINMEN,

By V. W. SATTERWHITE, *Vice President.*

(By R. J. T.).

C. A. ROLF, *General Chairman.*

PUBLIC BELT RAILROAD COMMISSION,

DELESSEPS S. MORRISON, *Mayor and President.*

Witness:

HARRY H. SCHWARTZ,

Chairman, Emergency Board No. 65.

The check for \$7,500 payable to Hennessey was delivered by counsel for Carrier to counsel for Hennessey.

Respectfully submitted.

HARRY H. SCHWARTZ, *Chairman.*

FLOYD MCGOWN, *Member.*

A. LANGLEY COFFEY, *Member.*