

Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

CREATED FEBRUARY 14, 1949
BY EXECUTIVE ORDER 10037
PURSUANT TO SECTION 10
OF THE RAILWAY LABOR ACT

To investigate and report in respect to a dispute involving the Denver and Rio Grande Western Railroad Company and certain of its employees represented by the Switchmen's Union of North America.

Denver, Colorado

MARCH 5, 1949

(No. 69)

DENVER, COLO., *March 5, 1949.*

THE PRESIDENT,
The White House.

MR. PRESIDENT: We have the honor to hand you herewith our report as an Emergency Board created by you by Executive Order 10037 to investigate and report respecting a dispute involving the Denver & Rio Grande Western Railroad Co. and certain of its employees represented by the Switchmen's Union of North America.

Respectfully submitted,

FRANK M. SWACKER, *Chairman.*

LEVERETT EDWARDS, *Member.*

ADOLPH E. WENKE, *Member.*

(II)

REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD CREATED FEBRUARY 14, 1949, BY EXECUTIVE ORDER 10037 UNDER THE PROVISIONS OF THE RAILWAY LABOR ACT TO INVESTIGATE AND REPORT IN RESPECT TO A DISPUTE BETWEEN THE DENVER & RIO GRANDE WESTERN RAILROAD CO. AND CERTAIN OF ITS EMPLOYEES REPRESENTED BY THE SWITCHMEN'S UNION OF NORTH AMERICA

The Board consisted of Frank M. Swacker of New York City, Judge Adolph E. Wenke of the Supreme Court of Nebraska, and Leverett Edwards of Oklahoma City, Okla. It convened at Denver, February 21, 1949, and Frank M. Swacker was elected chairman. Messrs. Ward and Paul of Washington, D. C. were designated by the Board as official reporters.

Appearance on behalf of the Union was by: C. E. McDaniels, acting vice president and general chairman.

Appearances on behalf of the carrier were by: B. J. Schorr, assistant to manager of labor relations; A. L. Johnson, assistant manager of labor relations; E. B. Herdman, superintendent; K. L. Moriarty, chief engineer; and H. M. Boyle, labor relations attorney.

The Board held public hearings beginning February 21, 1949, and continuing to and including March 3, 1949. Thereafter the Board conferred with the parties in an effort to adjust and dispose of the disputes, but its efforts in this respect were unavailing.

Following is the Executive Order 10037:

EXECUTIVE ORDER

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY AND CERTAIN OF ITS EMPLOYEES

Whereas a dispute exists between the Denver & Rio Grande Western Railroad Co., a carrier, and certain of its employees represented by the Switchmen's Union of North America, a labor organization; and

Whereas this dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce within the States of Colorado, New Mexico, and Utah to a degree such as to deprive those States 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 Denver & Rio Grande Western Railroad Company or its employees in the conditions out of which the said dispute arose.

(S) HARRY S. TRUMAN.

THE WHITE HOUSE,

February 14, 1949.

The threatened interruption of interstate commerce which was the occasion for the appointment of the Board was a strike which the Union had called to enforce compliance with its demands for the settlement of some 150 grievances growing out of alleged violations by the carrier of various terms of the contract subsisting between the carrier and the Union.

The Railway Labor Act which was endorsed by both railway labor and management at the time of its passage was constructed so as to furnish an avenue for the peaceable settlement of disputes of every nature which might arise between carriers and their employees. For the adjustment of grievances growing out of alleged violations of existing contracts, it created the National Railroad Adjustment Board with headquarters at Chicago, carefully devised with respect to the various crafts in the industry, the First Division of said Board having cognizance of such disputes as involve switchmen; and that organization is represented by a designee on that Board; in addition to the National Board, the act contemplates that parties may have system boards local to a single carrier and its employees; the act further makes provision for arbitration which may be utilized for the settlement of such disputes; and finally, it leaves the common law remedies through the courts available. There are, thus, four distinct forums to which recourse may be had for the peaceable and just disposition of disputes involving grievances.

Notwithstanding this, the Union in the instant case, under date of January 15, 1949, circulated an "official ballot" to its membership calling for a vote on a strike with respect to these grievances, and an affirmative vote authorized the calling of a strike and setting of its date which was set for 8 a. m., February 15, 1949. The carrier, although its officers were deeply involved in relief work necessitated by the recent storms in the area, nevertheless, as early as possible, started conferences with the view to an examination of the grievances, and procured the assistance of a mediator from the National Mediation Board to assist in the conferences. The parties had not concluded the examination of all of the grievances up to the eve of the strike date, and the Union refused to postpone it, as a result of which the appointment of this Emergency Board was sought by the carrier. During

those conferences, it is asserted by the carrier that the Union took "the attitude that carrier should pay all the claims in dispute without regard to their merits, and if carrier refused, organization would strike."

In the course of those conferences, some of the cases were settled. During the hearing before this Board, a few additional ones were disposed of.

We have examined all of the remaining claims, and we are of the opinion that:

Some of them are meritorious.

Some are debatable.

Some are without merit, a few even frivolous.

Still others are claims designed to procure an amendment of the contract by the device of claiming a violation of it instead of pursuing the orderly remedy provided by the Railway Labor Act for the amendment of the contract.

Inasmuch as this Board is powerless to render any binding adjudication with respect to these claims, we besought the parties to agree to arbitrate them. The carrier expressed willingness to submit the disputes to arbitration, but the Union refused to join therein.

There have been a few Emergency Boards appointed in somewhat similar circumstances where the disputes involved grievances, and some of them have reported recommending the manner of disposition that in their opinion should be made of the individual grievances.

In the instant case, however, the Union has bluntly stated that it would accept only such recommendations of this Board as might be favorable to it and would persist in its intention to strike to enforce settlement of such others as this Board might find unwarranted. In this situation we consider it would be a distinct disservice to make definitive recommendations with respect to the individual grievances.

Under the design of the act, it is not its purpose to create Emergency Boards to pass on grievances. As before stated, the act expressly provides three forums and also leaves open the common law for the disposition of disputes of this character. If there were any reasonable ground for supposing that the parties would in good faith accept our recommendations, we might have been disposed to make definitive recommendations even though we believe it to be a perversion of the act and one which, if persisted in, would soon destroy the usefulness of the National Railroad Adjustment Board, if not the whole act itself. For, if as is here openly admitted, the Union, instead of going to the established forum for the settlement of grievances, calls a strike creating an emergency resulting in the appointment of an Emergency Board, and then announces it will accept only

favorable recommendations, the usefulness of the act will soon be destroyed.

Our only recommendation, therefore, is that which we made to the parties at the conclusion of the hearing and which the Union rejected; that is, that they arbitrate the dispute. The record made before us is complete and would be available in the hands of a neutral arbitrator to make final and binding awards to dispose of the grievances; and we again urge it upon the parties.

Respectfully submitted.

FRANK M. SWACKER, *Chairman.*

LEVERETT EDWARDS, *Member.*

ADOLPH E. WENKE, *Member.*