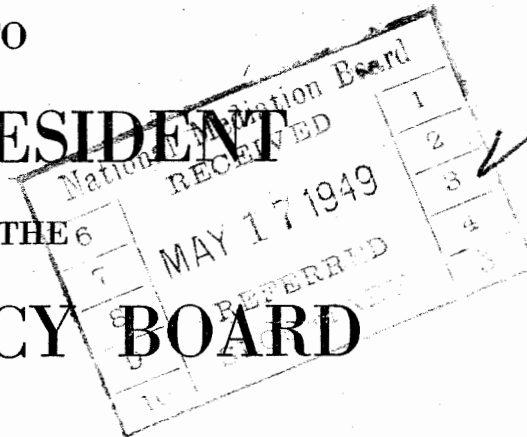


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Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD



APPOINTED MARCH 15, 1949
BY EXECUTIVE ORDER 10045 PURSUANT
TO SECTION 10 OF THE RAILWAY LABOR
ACT, AS AMENDED

To investigate and report in respect to a dispute involving the Wabash Railroad Co. and the Ann Arbor Railroad Co., carriers, and certain of their employees, represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and Brotherhood of Railroad Trainmen.

(NMB Case A-3028)

ST. LOUIS, MO.

APRIL 6, 1949

(No. 71)

ST. LOUIS, Mo., *April 6, 1949.*

THE PRESIDENT,

The White House.

MR. PRESIDENT: We have the honor to submit herewith our report as an Emergency Board designated pursuant to Executive Order 10045 to investigate and report respecting a dispute involving the Wabash Railroad Co. and the Ann Arbor Railroad Co. and certain of their employees, represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and Brotherhood of Railroad Trainmen.

ROGER I. McDONOUGH, *Chairman.*

CURTIS G. SHAKE, *Member.*

JOHN W. YEAGER, *Member.*

Report to the President by the emergency board created by virtue of Executive Order 10045 under the provisions of the Railway Labor Act, to investigate and report in respect to a dispute between the Wabash Railroad Co. and the Ann Arbor Railroad Co. and certain of their employees, represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and Brotherhood of Railroad Trainmen

EXECUTIVE ORDER 10045

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE WABASH RAILROAD COMPANY AND THE ANN ARBOR RAILROAD COMPANY AND CERTAIN OF THEIR EMPLOYEES.

WHEREAS a dispute exists between the Wabash Railroad Company and the Ann Arbor Railroad Company, carriers, and certain of their employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and the Brotherhood of Railroad Trainmen, labor organizations;

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 to a degree such as to deprive the country of essential transportation service:

NOW, THEREFORE, by virtue of 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 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 Wabash Railroad Company and the Ann Arbor Railroad Company, or their employees in the conditions out of which the said dispute arose.

(Sgd.) HARRY S. TRUMAN.

THE WHITE HOUSE,
March 15, 1949.

[Federal Register Doc. 49-2108; filed March 17, 1949; 10:49 A. M.]

The Board consisted of Roger I. McDonough, Justice of the Supreme Court of Utah; Curtis G. Shake, former Justice of the Supreme Court of Indiana; and John W. Yeager, Justice of the Supreme Court of Nebraska. The appointments were embodied in a letter from the President as follows:

U. S. NAVAL BASE,
Key West, Fla., March 17, 1949.

DEAR MR. JUSTICE: You are hereby designated and appointed under authority conferred by the Railway Labor Act, as a member of an emergency board created by Executive order of the President dated March 15, 1949, to investigate and report to me respecting the dispute between the Wabash Railroad Co. and certain of their employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and Brotherhood of Railway Trainmen, and you are hereby especially authorized to act in conformity with law and my Executive order.

The board will organize and investigate promptly the facts as to such dispute, and on the basis of facts developed, make every effort to adjust the dispute and report thereon to me within 30 days from the date of the Executive order.

* * * * *
Sincerely yours

HARRY S. TRUMAN.

Pursuant to directions, the members of the Board met in St. Louis, Mo., on Monday, March 21, 1949, and selected Roger I. McDonough to act as Chairman. Following this organization the Board repaired to the United States Court and Custom House where it convened to hear the dispute submitted to it by the President.

The appearances for the brotherhoods were:

- On behalf of the Brotherhood of Locomotive Engineers:
Lawrence B. Byrnes, assistant grand chief, Cleveland, Ohio.
- On behalf of the Order of Railway Conductors: J. H. Rodgers,
vice president, Louisville, Ky.
- On behalf of the Brotherhood of Railroad Trainmen: W. F.
Donahue, vice president, Cleveland, Ohio.
- On behalf of the Brotherhood of Locomotive Firemen and En-
ginemen: William C. Lash, vice president, Cleveland, Ohio.

The appearances for the carriers were:

- On behalf of the Wabash Railroad Co., and the Ann Arbor Rail-
road Co.:
J. A. McClain, general counsel.
A. E. Schoenbeck, general attorney.
G. H. Sido, vice president and general manager.

Arthur Davis, assistant general manager.

Frank Johnson, personnel officer,

Railway Exchange Building, St. Louis, Mo.

The meeting was called to order and Ward & Paul, Washington, D. C., were appointed as official reporters for the hearing.

The record before us discloses that between 1944 and 1948 there had been allowed to accumulate some 1,600 unadjusted operational disputes between the parties to this controversy. By December 1946, 412 of these grievances had progressed to formal demands upon the carriers, and by June 1948, this number had increased to 701. A strike ballot listing 353 of these demands was released on November 1, 1948, and 289 other claims were thereafter added to this list. Some of these demands were subsequently withdrawn and others were settled through mediation, but 149 claims remained undisposed of when on March 15, 1949, the strike became effective. Of these claims, 139 pertained to the Wabash and 10 to the Ann Arbor Railroad.

At the first session, not necessarily in the order of reference herein, the following occurred. Attention was called to the fact that on March 15, 1949, at about 6 a. m., a strike or stoppage of work went into effect of all the employees of these two carriers represented by the four brotherhoods. It was still in progress at the time the Board at first convened. The propriety of an Emergency Board functioning under such conditions was brought into the question.

The Board did not then and does not now indicate a view with regard to the question thus raised. The Board, however, was deeply concerned with the potentialities of the situation and the consequences of a continuation of the strike, which were already being sorely felt in the large area served by these two carriers. Therefore, in conformity with what it deemed a mandate from the Chief Executive contained in the letters of appointment of the members, the Board's first effort was to try to cause a return of the employees to their positions on the carriers and to bring about a resumption of service. A large part of the first session was devoted to this effort.

This purpose was not accomplished at that session, but at the close of the day the parties were persuaded to agree to meet and discuss the question of whether or not an arrangement could be made whereby the employees would be allowed to return to work pending consideration of the dispute by the Board. At the close of the day the Board went into recess to await a report from this meeting of the parties.

Before recess, the parties had informed the Board generally as to the basis of the dispute and the matters involved. In view of the turn that events have taken, a great amount of detail in this respect is not required.

There was not one, but many, disputes. They fell into 24 categories, namely: Final terminal delay; held out of yards; initial terminal switching; held away from home terminal; not used in turn; foreign line crews performing service in Wabash yard; yard claims because of road crews performing certain service in yard; yard claims of road crews because of performing certain service in yard; claims of yard crews for 8 hours in addition to other allowances; account of rerailing cars; alleged guarantee claims; claim for additional pay for alleged hostling service; application of awards; allegedly deprived of right of assignment; claims for additional time; coupling air cases; performing service in foreign yard; interchange point; allegedly working two assignments; allegedly used outside assignments; road crews performing work train service in yard; yardmaster allegedly performing duties of yardmen; alleged violation of Special Agreement of July 17, 1944; miscellaneous; attempt to abrogate Memorandum of Understanding of July 12, 1938. The number of claims involved was 149.

The categories are named here for the purpose of pointing out that most of the disputes involved matters proper to be progressed to and determined by the First Division of the Railroad Adjustment Board.

Why they were not so progressed and why they were allowed to accumulate on these properties in such large numbers, of course this Board is unable to say.

If it was the failure of management to give early attention and proper consideration to these claims as they arose, or if it was its fault in some other respect or respects, what happened here ought to be a warning to these and other carriers of the probable consequences of like failures and faults.

If it was the failure of the organization to take advantage of the legal processes of progressing claims to the Adjustment Board because of seeming delay entailed in the process, or some other fault, we think their judgment was fallacious. This Board is of the opinion that a strike to enforce claims without adjudication, where the law provides for adjudication, not only is hurtful to the general economy, but is also damaging to the cause of labor.

As to the Adjustment Board, if it is working to capacity and cannot, under existing conditions, be speeded up, steps ought to be taken to remedy the situation.

We reconvened on March 22, 1949, and late that afternoon the parties appeared and apprised us of the fact that a written memorandum of agreement had been entered into whereby the strike was to be suspended, and employees were to be notified to return to work on March 23, 1949, or as soon thereafter as possible. The members of the Board attested the agreement. The memorandum was as follows:

This letter is to set forth the understanding between the Wabash and the Ann Arbor Railroad Cos. and your organizations with respect to the terms under which the employees represented by your organizations will return to service; it being understood that such instructions to return to service will be given them today, March 22, 1949.

1. We are agreeable to restoring to service employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and Brotherhood of Railroad Trainmen with seniority unimpaired with all rights and privileges pertaining thereto.

2. No reprisals are to be made against any employee who has been out on strike.

3. All cases handled in conference Monday, March 14, 1949, and in subsequent conferences will be disposed of on the basis of the understandings reached in those conferences.

4. It is agreed that the carriers and the employees' representatives, subject to approval of the Emergency Board, will continue to discuss the remaining issues between the parties in direct conference, as has been done from 3 p. m., March 21 to date, each striving to reach a mutually satisfactory solution of such issues.

As to those issues, if any, upon which the parties cannot agree, they will be placed before the Emergency Board for investigation and report. It is understood that this procedure is based upon the continued functioning of the Emergency Board in the instant case.

5. Principles agreed upon between the carriers and representatives of the employees will be the governing factor in disposing of all cases in the docket.

The parties requested the Board then to go into recess and stand by in order that they, in joint conference, might make an effort to settle all or a part of the claims. The Board was asked to stand by in order that such disputes, if any, as could not be settled by the parties could then be submitted to it for consideration, report and recommendation. The request was granted and the Board, with daily progress reports, stood by until April 4, 1949, when the parties appeared in open session and reported full, complete, and final disposition and settlement of all matters in dispute. The agreement of the parties in this respect was in writing and signed by the members of the Board. It reads as follows:

This is to evidence:

That all matters involved in the dispute between the Wabash Railroad Co., and the Ann Arbor Railroad Co., and the employees of said railroad companies represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and Brotherhood of Railroad Trainmen, covered by National Mediation Board file case No. A-3028, and by the three official strike ballots dated November 1, 1948, and all supplemental cases related thereto, have been disposed of by mutual agreement of the parties;

That the undersigned officers of the four above-named employees' organizations are, by vote of the employees thereof, lawfully appointed representatives to act for and negotiate settlements for said employees, with authority to withdraw the employees from the service of the two named carriers, unless a satisfactory settlement of the questions in dispute could be effected;

That such a satisfactory settlement has been effected in accordance with such authority, and, therefore, such authority no longer exists.

Signed at St. Louis, Mo., this 4th day of April 1949.

Signed:

Lawrence V. Byrnes, assistant grand chief engineer, Brotherhood of Locomotive Engineers.

J. H. Rodgers, vice president, Order of Railway Conductors.

M. J. Bauer, general chairman, Brotherhood of Locomotive Engineers.

William C. Lash, vice president, Brotherhood of Locomotive Firemen and Enginemen.

J. J. Golden, general chairman, Brotherhood of Locomotive Firemen and Enginemen.

J. F. Buckley, general chairman, Order of Railway Conductors.

W. F. Donoghue, vice president, Brotherhood of Railroad Trainmen.

E. D. Conner, general chairman, Brotherhood of Railroad Trainmen.

Witnesses:

Roger I. McDonough.

Curtis G. Shake.

John W. Yeager.

We have this therefore to report, that on these carriers there is no longer a strike. The employees are back at work. We have no doubt that from now henceforth for a long time, amity and good will will be the order on these carriers insofar as these parties are concerned.

We, the members of the Board, are naturally pleased with the results accomplished. We think, indeed we know, that these results are far better and greater, and infinitely more far-reaching, than if we had been required to spend long days, perhaps weeks, of laborious investigation and had been required to make recommendations which still, after a cooling-off period, would have been subject to acceptance or rejection.

The parties are to be congratulated on the full measure of their accomplishment. We commend the efforts of all of them. We recommend a like effort in the same spirit on other carriers where like or similar controversies exist or may arise, not, however, in the face of a strike or threat of strike, but in the interest of justice and fair dealing, and in avoidance of temporary unemployment of untold numbers, and of regional economic paralysis.

Respectfully submitted.

ROGER I. McDONOUGH, *Chairman.*

CURTIS G. SHAKE, *Member.*

JOHN W. YEAGER, *Member.*

ST. LOUIS, Mo., April 6, 1949.