

Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

APPOINTED JULY 20, 1949, BY EXECUTIVE
ORDER 10071 PURSUANT TO SECTION 10
OF THE RAILWAY LABOR ACT

To investigate a dispute between the Brother-
hood of Railroad Trainmen and the Southern
Pacific Company (Pacific Lines)

(NMB Cases A-3085, A-3086)

SAN FRANCISCO, CALIFORNIA
SEPTEMBER 1, 1949

(No. 77)

SAN FRANCISCO, CALIF., *September 1, 1949.*

THE PRESIDENT,
The White House,
Washington, D. C.

DEAR MR. PRESIDENT: We have the honor, as an Emergency Board, created by you on July 20, 1949, by Executive Order 10071, under the Railway Labor Act, to hear and report upon a dispute between the Brotherhood of Railroad Trainmen and the Southern Pacific Co. (Pacific lines), to submit herewith our report and recommendations concerning the matter.

Yours truly,

FRANK M. SWACKER, *Chairman.*
ROBERT G. SIMMONS, *Member.*
LEVERETT EDWARDS, *Member.*

The Executive order creating this Board is as follows:

"EXECUTIVE ORDER

"CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE SOUTHERN PACIFIC CO. (PACIFIC LINES) AND CERTAIN OF ITS EMPLOYEES

"WHEREAS a dispute exists between the Southern Pacific Co. (Pacific lines), 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 provision 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 a large section 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 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 Southern Pacific Co. (Pacific lines) or its employees in the conditions out of which the said dispute arose.

"HARRY S TRUMAN."

Pursuant to that Executive order, the President designated Hon. Robert G. Simmons, Chief Justice of the Supreme Court of Nebraska; Hon. Leverett Edwards, Commissioner, Oklahoma State Industrial Commission, Oklahoma City, Okla.; and Frank M. Swacker, of New York City, to constitute the Board. The Board agreed upon Mr. Swacker to act as chairman.

It designated the Alderson Reporting Co. to act as reporters.

The Board convened at San Francisco, August 2, 1949.

The following appearances were entered :

- R. E. Hallawell, general manager, Southern Pacific Co., 65 Market Street, San Francisco, Calif.
- J. J. Sullivan, manager of personnel, Southern Pacific Co., 65 Market Street, San Francisco, Calif.
- R. E. Wedekind, general attorney, Southern Pacific Co., 65 Market Street, San Francisco, Calif.
- Burton Mason, general attorney, Southern Pacific Co., 65 Market Street, San Francisco, Calif.
- W. A. Gregory, Jr., attorney, Southern Pacific Co., 65 Market Street, San Francisco, Calif.
- B. W. Fern, vice president, Brotherhood of Railroad Trainmen, 939 Pacific Building, San Francisco, Calif.
- J. J. Corcoran, chairman, General Grievance Committee, Brotherhood of Railroad Trainmen, 939 Pacific Building, San Francisco, Calif.
- G. W. Crawford, vice chairman, General Grievance Committee, Brotherhood of Railroad Trainmen, 939 Pacific Building, San Francisco, Calif.
- J. E. Teague, secretary, General Grievance Committee, Brotherhood of Railroad Trainmen, 939 Pacific Building, San Francisco, Calif.
- Henry P. Melnikow, consulting economist for the Brotherhood of Railroad Trainmen, 46 Kearny Street, San Francisco, Calif.
- Clifford D. O'Brien, counsel for the Brotherhood of Railroad Trainmen, Suite 418, 905 Second Avenue Building, Seattle, Wash.

Hearings were held from day to day, and it appearing that the investigation would not be completed within the appointed time, the parties stipulated that the Board might have an extension of 30 days in which to make and render its report; and the President approved such extension.

The cause of the dispute was certain demands of the Brotherhood for changes in rules which were presented to the carrier January 14, 1949. Negotiations having failed to produce any results and mediation having likewise failed, the Brotherhood had circulated a strike ballot. The rules changes demanded were as follows :

"ROAD SERVICE

"1. Freight, mixed and passenger trains, consisting of less than forty (40) cars, exclusive of the engine or motor handling the train and caboose used for convenience of crew, shall be manned by not less than two brakemen.

"2. Freight, mixed and passenger trains, consisting of forty (40) cars or more, exclusive of the engine or motor handling the train and caboose used for the convenience of crew, shall be manned by not less than three brakemen.

"3. Local freight and mixed trains shall be manned by not less than three brakemen; except, when the operation is over double-track territory requiring cross-over movements, an additional brakeman shall be provided.

"4. Where a grade attains 2 percent or more for a distance of ten (10) or more continuous miles, any train consisting of seventy (70) cars or more, exclusive of the engine or motor handling the train and caboose used for the convenience of the crew operating over such territory, shall be manned by not less than four brakemen.

"5. Work trains shall be manned by not less than three brakemen when flag protection is required only in one direction. When flag protection is required in both directions, or if the operation is over double-track territory requiring cross-over movements, an additional brakeman shall be provided.

"6. Local freight and work train assignments, when the character of the work is such that flag protection is not required in either direction, shall be manned by not less than two brakemen.

"YARD SERVICE

"1. When handling cuts of forty (40) cars or more, when such movements involve the use of a main track, including a foreign line main track, the yard crew handling shall be manned by not less than a foreman and three helpers.

"2. Yard crews performing switching on tracks within yard limits which attain a grade of more than one-half of 1 percent shall be manned by not less than a foreman and three helpers.

"3. In yards where crews perform switching over highway and street crossings and the movements must be protected by a member of such crews, an additional helper shall be provided.

"4. Where cuts of cars are handled in intrayard movements, when such movements exceed a distance of 3 miles, a standard caboose shall be provided for the use of helper stationed on rear of such cuts.

"The application of the above shall supersede any rule with which it conflicts; except, existing rules which are considered more favorable by the committee shall be preserved. The specific existing rules applicable to the Southern Pacific Co. (Pacific lines) which are considered more favorable by this committee are those appearing on pages 2, 11, and 23, Trainmen's Agreement, as follows:

"PAGE 2

"Two additional brakemen to be furnished during busy season to run in connection with trainmen on Corvallis and Arlie freights and Corvallis passenger.

"PAGE 11

"Between San Francisco and San Bruno via Colma, three brakemen will be employed on trains of 25 cars or more, also between Santa Margarita and San Luis Obispo on trains of 15 cars or more.

"PAGE 23

"Between Indio and Colton not less than two brakemen will be employed on work trains and not less than three brakemen will be employed on all other freight trains.

"Also, the specific existing rule applicable to the former El Paso and Southwestern System which is considered more favorable by this committee is article 11, section (a), Yardmen's Agreement, former E. P. & S. W."

These demands were precipitated by the fact that at the State election in November 1948, the theretofore subsisting "full crew" train service law was, in large measure, repealed, effective December 15, 1948, and the Public Utilities Commission empowered to make regulations concerning the consist of train crews necessary in the promotion of safety, with the proviso that feather-bedding will not result. Conformable to this change in the law, the Southern Pacific Co. substituted two brakemen and conductor crews in place of numerous crews theretofore comprised of three or more brakemen and a conductor. The three other principal carriers, i. e., The Atchison, Topeka & Santa Fe Railway, the Western Pacific Railroad Co., and the Union Pacific Railroad Co., followed the same course in California. The Union Pacific was affected in but a very small way, and it made an agreement with the union for two-man crews to receive arbitrary additional mileage, and thus settled the matter so far as that road was concerned. The other two carriers, i. e., the Santa Fe and the Western Pacific, were served with like demands to those involved in the Southern Pacific case. It is understood that these companies and the Brotherhood are awaiting the outcome of this proceeding.

Immediately upon the law becoming effective, the Public Utilities Commission instituted a proceeding to inquire as to the necessity, in the promotion of safety, for any train crews to consist of more than two brakemen and a conductor. The Commission, furthermore, has sent out field representatives to make a full investigation concerning the detailed situations on each division of all of the carriers.

It has taken testimony, so far as the Western Pacific is concerned, and is about to begin taking testimony on the Southern Pacific situation.

It will be observed that the California Public Utilities Commission's authority is restricted to the ordering of additional crew members in the promotion of safety only. That Commission has not yet defined the scope of "promotion of safety." While the demands here embrace some elements of safety as a part of their justification, they are not confined to this ground. They are predicated primarily upon the bargaining provisions of the Railway Labor Act.

The demands are much wider in extent than the changes effected by the carrier following repeal, and to a considerable extent follow the pattern of demands made by the Union in previous national movements.

The laws of four of the States surrounding California, i. e., Oregon, Arizona, Nevada, and Texas, embrace certain train crew consist requirements. That of Oregon provides that trains of more than 40 cars operated for 15 continuous miles outside yard limits and local trains must have not less than three brakemen; other trains, two brakemen. In Arizona three brakemen are required on trains of 40 cars or more, and on all local trains; two brakemen on other trains. In Nevada three brakemen are required on trains of more than 50 cars; two brakemen on shorter trains. In Texas two brakemen are required on freight and work trains. The California law, which was amended December 15, 1948, required a minimum of three brakemen on trains of more than 49 cars and additional brakemen, dependent upon the length of the train and the grade over which it was operated, up to as many as seven brakemen for a train of 102 cars, or more, operating over a grade of more than 1½ percent for a distance of more than one-half mile. Because of the requirements of the laws of surrounding States, the carrier's opportunity to take advantage of the amendment of the California law was greatly curtailed.

It will be noted that the demands here involved are for rules of system-wide application. There are presently no system-wide agreements on the subject between the carrier and the union. There are several agreements for local application, i. e., agreements calling for a minimum of three brakemen, handling 45 cars, in the district north of Ashland, and the same between Dunsmuir and Red Bluff; the same between Truckee and Sparks, and trains with more than 15 cars between San Luis Obispo and Santa Margarita; and all freight trains between Colton and Indio. There is also an understanding, not carried in any agreement, that trains in New Mexico, consisting of 70 cars or more, will carry a third brakeman, and that locals operating

out of El Paso on the Douglas and Tucumcari lines, if consisting of more than 50 cars when leaving the terminal, shall have a third brakeman. Other trains are operated with more than two brakemen without agreement to that effect; namely, between Mojave and Bakersfield, on joint trackage with the Santa Fe which uses three brakemen on through freight trains, and also between Los Angeles and Indio, because of the agreement provision between Colton and Indio. A number of local freight trains are also manned with more than two brakemen.

The carrier asserts that the union was taken by surprise by the results of the election in California, and realizing it had no general agreement provision, having theretofore depended on the State laws, filed these demands as a safeguard against repeal of full-crew laws in the other States. It further points out that the demands are quite similar to the national pattern which has been followed by the union for years, in an attempt to procure legislation by Congress and the several States that would have the effect of requiring the retention of employees who might be dispensed with through technological advances arising from the greater use of Diesel power, the better construction of freight cars, improvements in roadway and track, signal installation, double-tracking, automatic train control, and centralized traffic control.

Whatever may have been the merit of the train limitation laws passed by the various States at the time, they can no longer be justified. Trains of 70 cars are now commonplace. Indeed, many trains with two brakemen crews are now operated with as many as 150 cars with entire safety and efficiency.

The union contends that such radical changes in working conditions which flowed from the ex parte action of the carrier were of a kind that the Railway Labor Act requires should be submitted to notice and negotiation before making. It was argued for the union that the effect of taking one man off the crew of many trains was to slow up operation of the train because of the fewer men available to perform necessary services. It was claimed that under the dual basis of pay, i. e., miles or hours, the effect might be to require a crew to remain on duty longer in order to earn their regular compensation, or earn less if they only remained on duty the same length of time. For illustration, take a run that might be 150 miles which ordinarily would be made in 5½ hours with the old crew might now take 7½ hours. This, the union contends, would be such a substantial change in their wage agreement as would require notice and negotiation. The carrier appears to feel that the matter of crew consist ought to be one of purely managerial discretion. That it is a bargaining subject on this carrier is no longer open to question for the carrier here has already bargained with the

union, and has subsisting agreements covering local situations. As pointed out, it may be an integral part of compensation under the dual basis of pay system. Indeed, the carrier takes the position here that it is undesirable to enter into agreements with the union on the subject because once such agreements are established, they claim to find it impossible, as a practical proposition, to get the union to agree on changes or cancellations which might be warranted by changed conditions.

The demand, as made by the union, would undoubtedly result in considerable feather-bedding, that is, the employment of unneeded brakemen. This is because the demand is on a system-wide basis and adopts rigid standards for application, based on arbitrary conditions, such as where the train carries 40 cars, or more, without regard to the necessity for a third brakeman. There are many through trains operated on the system, carrying 90 cars or more, which run through from terminal to terminal without a stop, and where there would be nothing whatever for the third brakeman to do, except perhaps in the very infrequent case of a break-in-two or derailment. And even in those situations, in protected territory he generally would not be necessary, although he could help. The same may be true of other trains operating in double track or in centralized traffic control territory. On the other hand, there probably are some through freight trains where there would be ample justification for a third brakeman. For example, on runs involving grades where many retainers are required to be used, where helpers may be cut in and out, and numerous other conditions, where actually there would be real work for the third man and his presence would materially speed up operation, whereas his absence would materially slow it down. Speedier movement is a mutual advantage to the company and the union. That is the theory behind the dual basis of pay. That basis recognizes that vicissitudes occasionally occur which prevent optimum results, and in that case, within limits, the union, as well as the management, share equally in the misfortune.

Only thoroughly experienced operating men can pass judgment on the actual advantage of the use of a third brakeman. It requires specific consideration of each assignment, including very many factors of which the number of cars in a train is one of the less significant. It follows, therefore, that the subject will not lend itself to a system-wide rule, but rather that local agreements covering specific operations where a third brakeman is justified should be negotiated.

In the negotiations between the carrier and union, no attempt was made to survey the possibility of such local agreements. The union, on the one hand, stood on its system-wide demands, and the

carrier made no counterproposals to deal with specific situations. It simply rejected the union's demands, and, further, itself served notice of its desire to cancel the existing agreements. So also the demand for four brakemen on trains of 70 cars or more operating over grades attaining 2 percent or more for a distance of 10 or more continuous miles. These factors might be ones appropriately to be considered in dealing with particular runs, but again are not standards susceptible of system-wide application. No evidence was tendered by the union to establish as reasonable the demand for three brakemen on work trains.

So much for the road-service demands.

The proposals with respect to yard service are likewise on a system-wide basis, and where they may be entirely justifiable in some situations, they might be utterly unjustifiable in others. For example, the requirement for an additional helper when switching on tracks within yard limits attaining a grade of more than one-half of 1 percent. A situation might arise in a yard where there might be a single industry track with such grade which might be switched only once a day, and then perhaps with only one car. One crew might switch it one day, and another crew the next day, with the result that all the crews in the yard would have to be augmented on this account. On the hearing, the union recognized that this demand, as stated, was rather vague, and expressed a willingness to modify the demand to a reasonable compass and indicated that they had two particular yards in mind.

The demand for an additional helper where switching involves crossing highways and streets is too broad. On the other hand, evidence was given of two extremely hazardous switching situations on public streets in Los Angeles and San Francisco, and the demand for an additional helper on those two particular spots, if for no other reason than to protect his fellow workmen against automobile traffic, might be entirely reasonable so long as the present condition continues. Here, again, however, that is a matter for local agreement, and not grounds for a system-wide rule that might work absurdities.

The same is true of the demand for cabooses. The standard of the movement of drag cuts for 3 miles is not a reasonable basis. On the other hand, where transfer crews are required to go away from their point of going on duty and their lockers to be gone several hours, in the absence of a caboose they would be compelled to carry their lunches, raincoats, and other equipment about with them with no place to store them safely while switching. The type of runs which would justify a caboose, are readily identifiable by the parties and should be the subject of local agreement.

Extensive statistics were submitted by both parties dealing with the question of efficiency of operation and casualties. While the statistics concerning efficiency, in general, indicate a gradual improvement since the war, there are many factors which enter into this result. The principle of these are extended Dieselization, installation of centralized traffic control, changes of line, improvement in equipment, and a large number of other factors, the individual contributions of which are imponderable. Accordingly, even if it were a demonstrable fact with respect to a particular run, that the taking off of a third brakeman had the effect of materially slowing the operation of that particular train, its effect on the aggregate statistics would be infinitesimal. Consequently, no reasonable conclusion can be drawn from these system-wide statistics concerning the effect on operation of the crew diminution.

On the question of casualties, here, again, a large amount of statistics was presented concerning the experience before and after repeal. As the latter period embraces only 6 months, and as accidents are, by their very nature, so spasmodic, both as to extent and frequency of occurrence, no reasonable conclusion can be drawn from such a brief experience. On the other hand, the extent that crew reductions have increased the hazard in particular operations will undoubtedly be thoroughly explored by the California Public Utilities Commission and it will doubtless provide remedies in those places where they are required. It cannot be said, as a universal proposition, applicable system-wide that a two-brakeman crew is inherently dangerous or more hazardous than three men on the same operation. On the other hand, there probably are specific individual runs where the presence of a third man would tend materially to reduce the hazard. So far as the demands are predicated on safety, it is our view that the determination in that respect by the California Public Utilities Commission will produce appropriate results.

From the foregoing discussion it is apparent that the parties have not exhausted bargaining as required by the Railway Labor Act. They have engrossed themselves with generalities rather than the specific matters. At the conclusion, the Board undertook mediation, but without success.

Accordingly we recommend that the union, if it so desires, reform its demands so as to make them specific as to location and assignments, and then resume bargaining with the carrier.

Respectfully submitted.

FRANK M. SWACKER, *Chairman.*

ROBERT G. SIMMONS, *Member.*

LEVERETT EDWARDS, *Member.*

