

Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

**APPOINTED JUNE 15, 1950, PURSUANT TO
SECTION 10 OF THE RAILWAY LABOR ACT**

**To investigate an unadjusted dispute between the
Boston & Albany Railroad Company and certain
of its employees represented by the Brotherhood
of Railroad Trainmen**

(NMB Case No. A-3392)

BOSTON, MASS.

JULY 6, 1950

(No. 86)

BOSTON MASS., *July 6, 1950.*

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

Mr. PRESIDENT: We have the honor to tender herewith our report as an Emergency Board appointed by you under Executive Order 10138 dated June 6, 1950, under the Railway Labor Act, section 10 (45 U. S. C. 160), to investigate a dispute between the Boston & Albany Railroad Company (New York Central Railway, Lessee) and certain of its employees represented by the Brotherhood of Railroad Trainmen.

Respectfully submitted,

ANDREW JACKSON, *Chairman.*
PAUL G. JASPER, *Member.*
GEORGE W. STOCKING, *Member.*

REPORT

This Emergency Board was created by Executive Order No. 10130, dated June 6, 1950, which order is as follows:

EXECUTIVE ORDER

CREATING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES BETWEEN THE BOSTON & ALBANY RAILROAD COMPANY (NEW YORK CENTRAL RAILWAY COMPANY, LESSEE) AND CERTAIN OF ITS EMPLOYEES

WHEREAS a dispute exists between the Boston & Albany Railroad Company (New York Central Railway Company, Lessee) 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 judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation services.

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 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 Boston & Albany Railroad Company or its employees, in the conditions out of which the said dispute arose.

(S) HARRY S. TRUMAN.

THE WHITE HOUSE,
July 6, 1950.

Pursuant to this Executive order, the President, under date of June 15, 1950, designated the Honorable Paul G. Jasper of Indiana, Dr. George W. Stocking of Tennessee, and Andrew Jackson of New York to constitute the Board.

The Board met at Boston, Mass., June 21, 1950, and organized and approved the selection of Alderson Reporting Co. as reporters. The Board began hearings on that day and continued them to and including June 29, 1950. It received 564 pages of testimony, 31 exhibits, 30 pages of argument, and it inspected the car involved in the dispute.

(1)

It also made the round trip between Boston and Springfield on a regularly scheduled Budd Diesel car. After the hearings, the Board undertook to mediate the difference between the parties, but without success.

THE CONTROVERSY

This is a dispute between the Boston & Albany Railroad Co. (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railroad Trainmen (hereinafter referred to as the Brotherhood). The dispute grows out of a decision by the Carrier to inaugurate certain additional passenger runs between Boston and Springfield, Mass., using a single unit passenger car (hereinafter referred to as the Budd Diesel car) manned by an engineer and a conductor.

The Budd Co. designed its Diesel car as a low-cost, high-speed vehicle for railway passenger transportation in commuting, inter-urban, and branch line service. This car, which is 85 feet long, and which seats 89 passengers, is powered by two 275 horsepower Diesel engines mounted under the car in order to maximize floor space for passengers. It carries neither baggage nor mail. It can be operated as a single-car unit or as a multiple-car unit by coupling two or more cars. The Budd car has a cab or vestibule with controls at both ends and is designed for operation solely by an engineer. It need not be backed nor turned around. Although it has an exit or entrance at both ends, the passengers enter only at the nondriving end. The car sells for \$141,000.

The Budd Co., after trial runs totaling 43,000 miles, estimated the cost of operating the car, including all out-of-pocket expenses, amortization and depreciation, to be 56 cents a mile with a two-man crew and 64 cents a mile with a three-man crew. On the basis of 1 month's operation, the Carrier has calculated its per mile cost at 70 cents with a two-man crew. This includes direct expenses (wages, fuel, and engine-house service) and interest and amortization of investment. It includes no general overhead nor road maintenance expense. A three-man crew would cost about 7 or 8 cents a mile more. An engineering firm which surveyed the problem for the Budd Co. predicts that if the car performs as its makers expect, the Budd Co. will find a domestic market for about 2,500 cars. The Carrier is the first American railroad to use the car.

When the Carrier advised the Brotherhood on February 6, 1950, of its plans to inaugurate this new service without the use of a trainman, General Chairman Joseph R. McQuade protested to the Carrier that under the agreement between the Brotherhood and the Carrier

covering working conditions and rates of pay, the Carrier was obligated to use trainmen on the proposed runs to perform the services customarily performed by brakemen or flagmen.

On April 19, 1950, the Carrier furnished the Brotherhood with "blue prints" of the proposed runs. Thereupon, Chairman McQuade protested to the crew dispatcher the operation of the proposed runs without a trainman. A few days later, Chairman McQuade carried his protest to the Carrier's general manager, H. D. Johnston. On being notified by General Manager Johnston that the runs would be inaugurated on May 1 without the use of a trainman, Chairman McQuade notified the president of the Brotherhood, who invoked the services of the National Mediation Board.

Mediation was conducted from April 27 to May 3, 1950. Failing to settle the controversy, the National Mediation Board requested the parties to submit the controversy to arbitration. The Carrier accepted the proposal; the Brotherhood rejected it.

Meanwhile the Carrier had inaugurated the proposed runs on May 1, 1950. The following day, the Brotherhood's general committee voted to spread a strike ballot among the trainmen. On May 8, 1950, the trainmen voted to strike unless the dispute was satisfactorily adjusted and a strike was set for June 8, 1950. In accordance with the provisions of the Railway Labor Act, the President of the United States issued the Executive order dated June 6, 1950, hereinbefore set out.

THE POSITION OF THE BROTHERHOOD

The Brotherhood contends:

(1) That the Carrier, in failing to use a trainman on the Budd Diesel cars and in combining the services of a conductor and trainman, violated the agreement between the Carrier and the Brotherhood.

(2) That in thus violating the agreement the Carrier in effect changed the working conditions embodied in the agreement without having proceeded under section 6 of the Railway Labor Act.

(3) That to operate the Budd Diesel car without a trainman is hazardous.

The Brotherhood supports its contention that the Carrier has violated its agreement, and that it should have proceeded under section 6 of the Railway Labor Act if it did not want to use a trainman on the Budd car, by testimony that both long-established custom and the Carrier's own operating rules recognize a sharp line of demarcation between the duties of a conductor and the duties of a trainman and that neither the rules governing trainmen nor the rules governing conductors permit the combination of duties in either grade. It

filed with the Department of Public Utilities arising out of these operations, nor has any order been issued.

THE BOARD'S FINDINGS AND RECOMMENDATIONS

The specific issues which have been presented to the Board are narrow issues, involving the interpretation of a contract.

The Railway Labor Act provides machinery for the settlement of disputes of this sort—as indeed it does for all kinds of disputes. It places a specific obligation on both carriers and employees to try to settle in conference any dispute between them, whether it concerns the meaning of a contract or changes in it. In the judgment of the Board, neither of the parties has complied fully with its obligations under the law in trying to settle the present dispute.

The record indicates that after the Brotherhood had protested the proposed inauguration of the Budd Diesel cars without the use of a trainman the Carrier failed to “confer” with the Brotherhood within the meaning of the Railway Labor Act.

Confronted, as it was, with the management's decision to inaugurate the new runs using Budd Diesel cars without trainmen, the Brotherhood should have followed either of two courses:

- (1) It should have inaugurated proceedings which would have brought its claims before the National Railroad Adjustment Board, the agency established to settle grievances and interpret contracts; or
- (2) It should have inaugurated proceedings under section 6 of the Railway Labor Act.

In preference to either of these alternatives, it invoked mediation; and when it failed to achieve its objectives, it voted to strike. This procedure caused the controversy to come before an Emergency Board without the basic issues ever having been considered in conference between the parties, and without their having been presented to this Board.

The basic issues in this case have far-reaching implications. They grow out of the introduction of technological developments in railway transportation. They raise these questions, among others, how fast and how far and at whose expense and to whose profit will improved transportation techniques be introduced in the railway field. The general introduction of the Budd car in uses to which it is adapted throughout the country would no doubt occasion a comprehensive reorganization in commuting, branch line, and suburban train schedules, and significant changes in the size and makeup of train crews and in the runs of operating employees. Unless the Budd car service should recapture a part of the auto- and bus-passenger travel, its widespread introduction will tend to reduce immediately railroad

manpower needs. Obviously, the public (interested in low-cost and efficient transportation), the carriers (interested in low-cost and profitable transportation), and employees (interested in improved working conditions and economic security) have a stake in this development.

But, as previously stated, these broad issues have not come before this Board. The Board's findings must necessarily be limited to the narrow issues before it.

The Brotherhood has chosen to protect its interests by relying on its alleged rights under the terms of its agreement. But in taking this position it has resorted to the use of economic power rather than the machinery provided by the Railway Labor Act for settling disputes. The law contemplates that, if used at all, economic coercion should be a last resort. For the Board to decide the narrow issues in this case would be to encourage the use of improper short cuts and thereby to contribute to the emasculation of the Railway Labor Act. This the Board cannot do.

In the light of all the facts before it, this Board recommends:

(1) That if the Brotherhood believes that the trainmen's interests are adequately protected by the existing agreement, it follow the procedure relating to disputes "growing out of grievances or out of the interpretation or application of agreements," as provided by the Railway Labor Act; or

(2) That if the Brotherhood does not believe that the trainmen's interests are adequately protected under the existing agreement, it give "written notice of an intended change" in the agreement and proceed in accordance with the Railway Labor Act.

Dated: July 6, 1950.

Respectfully submitted.

ANDREW JACKSON, *Chairman.*

PAUL G. JASPER, *Member.*

GEORGE W. STOCKING, *Member.*

