

Report
TO
THE PRESIDENT
BY
Emergency Board
No. 191

APPOINTED BY EXECUTIVE ORDER 12159
DATED SEPTEMBER 20, 1979
PURSUANT TO SECTION 10 OF THE
RAILWAY LABOR ACT, AS AMENDED

To investigate disputes between Chicago, Rock Island and Pacific Railroad Company and certain of their employees represented by the United Transportation Union and the Brotherhood of Railway, Air-line and Steamship Clerks, Freight Handlers, Express and Station Employees.

**(National Mediation Board Case Nos. A-10287, A-10303, A-10324,
A-10313 and A-10314)**

WASHINGTON, D.C.
October 22, 1979

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THE PRESIDENT
The White House
Washington, D.C.

DEAR MR. PRESIDENT:

On September 20, 1979, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12159, you created an Emergency Board to investigate disputes between the Chicago, Rock Island and Pacific Railroad Company and certain of its employees represented by the United Transportation Union and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees.

Following its investigation of the issues in dispute, the Board developed recommendations that were accepted as the basis for a settlement of those issues that separated the parties from agreement.

The Board now has the honor to inform you of a settlement of the issues out of which these disputes arose and to submit its Report concerning the recommendations that led to the settlement.

Respectfully submitted,

JAMES J. REYNOLDS, Chairman
IDA KLAUS, Member
NICHOLAS H. ZUMAS, Member

I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 191 was created by President Carter on September 20, 1979, by Executive Order No. 12159, pursuant to Section 10 of the Railway Labor Act, as amended (45 U.S.C. 160).

The creation of the Emergency Board was based upon the recommendation of the National Mediation Board (NMB) because of the existence of a strike by the United Transportation Union (UTU) and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC) against the Chicago, Rock Island and Pacific Railroad Company (Rock Island), which the NMB found was depriving the Middle West of essential transportation service.

The strike followed a long period of unfruitful negotiations between the parties which commenced in early 1977, mediatory efforts by the NMB, rejection of proffers of arbitration, and rejection of the recommendations of a Special Board of Inquiry by one of the labor organizations.

The President appointed the following members of the Board: James J. Reynolds, former Under Secretary of Labor and retired President of the American Institute of Merchant Shipping, Washington, D. C., chairman; Ida Klaus, member of the New York State Public Employment Relations Board, Attorney and Labor Arbitrator, New York, New York, member; Nicholas H. Zumas, Attorney and Labor Arbitrator, Washington, D. C., member.

II. HISTORY OF THE DISPUTES

The Rock Island is the fourth largest rail carrier of grain in the western region of the United States, operating over some 7,500 miles of track in 13 midwestern states.¹ Since March 17, 1975, the Rock Island has been in reorganization under Chapter 77 of the Bankruptcy Act under the direction of a trustee appointed by the U. S. District Court for the Northern District of Illinois, Eastern Division.² BRAC represents some 1,600 employees on the Rock Island. UTU represents some 2,500 employees on the property. These employees are

¹ Currently, the Rock Island's operations are being conducted by Kansas City Terminal Railway Company under the Directed Service Order of September 26, 1979, issued by the Interstate Commerce Commission.

² The Court directed the Trustee on October 10, 1979, to present a plan of reorganization or a plan of liquidation within 60 days.

organized in three branches: UTU (E) representing firemen, UTU (S) representing switchmen, and UTU (T) representing conductors and brakemen.

The BRAC-Rock Island Dispute

On April 1, 1977, pursuant to Section 6 of the Railway Labor Act, BRAC served the Rock Island with a Notice of its desire to revise wages and work rules. On April 28, 1977, an initial conference was held to discuss the revisions sought by BRAC. At this conference, the Carrier informed BRAC that it would not grant the National Railway Labor Conference (NRLC) power of attorney to negotiate wages and work rules on a national basis for the Rock Island. The Rock Island determined to proceed with negotiations separately. The Rock Island did not submit formal Section 6 Notices at that time, but submitted a number of proposed rules changes for informal discussion with BRAC.

During the negotiations in 1977 no agreement was reached. On December 22, 1977, the Rock Island elected to serve formal Section 6 Notices. On January 10, 1978, BRAC served additional Section 6 Notices for concurrent handling. Negotiations on the formal Section 6 Notices began in January 1978 and continued at various times through August 1978, with no agreement.

On August 8, 1978, BRAC invoked the services of the National Mediation Board (NMB).³ Mediation sessions were held in January and May of 1979. On June 20, 1979, the NMB proffered arbitration, which was rejected by the Carrier and accepted by BRAC. On August 11 and 17, 1979, the NMB resumed "mediation in the public interest" in Washington, D. C.; however, no agreement was reached. On August 28, 1979, BRAC struck the Rock Island.

The UTU-Rock Island Dispute

On January 3, 1977, the three branches of UTU served Section 6 Notices for changes in wages and work rules. An initial conference was held on these Notices on February 1, 1977, at which time it was agreed to suspend further negotiations until a later date. The Rock Island served its Section 6 Notices on August 29, 1977. Supplemental Section 6 Notices were served by the parties between September 1977 and July 1978.

Negotiations between the Rock Island and each of the three

³ The case was docketed as NMB Case No. A-10313. A companion case involving the Peoria Terminal was docketed as NMB Case No. A-10314.

branches of UTU were conducted separately. Bargaining with UTU (E & S) commenced in September 1977, and with UTU (T) in October 1977. The negotiations with the three branches continued at various dates through August 1978, and one joint session was held on March 22, 1978. On June 15, 1978, UTU(T) invoked the services of the NMB.⁴ On July 12, 1978, and on August 23, 1978, UTU(S) and UTU(E), respectively, also invoked the services of the NMB.⁵ Mediation sessions were held on both a separate and joint basis on various dates between September 1978 and March 1979. While these sessions did not produce a settlement, the focus of the dispute was narrowed.

On April 6, 1979, the NMB proffered arbitration to the parties, which was ultimately rejected by both parties. Mediation was resumed on May 21, 1979, and on May 23, 1979, the parties agreed to a mediator's proposal to establish a Special Board of Inquiry to investigate and make recommendations concerning the issue of retroactive pay. The Special Board began hearings on July 26, 1979, and issued its Report and Recommendations on August 27, 1979. Two days later, UTU struck the Rock Island.

Following the strikes by BRAC and UTU, the National Mediation Board held further "mediation sessions in the public interest" on September 11, 1979.

III. ACTIVITIES OF THE EMERGENCY BOARD

The Board convened in Washington, D.C., on October 2, 1979, for on-the-record ex-parte hearings with BRAC and on October 3, 1979, with UTU. Similar on-the-record ex-parte hearings were held with the Rock Island on October 4, 1979, concerning its dispute with BRAC, and on October 5, 1979, concerning its dispute with UTU.

Transcripts and exhibits submitted to the Board were exchanged at the direction of the Board. After a recess to provide time for a careful review of the materials exchanged, the Board commenced a series of off-the-record discussions with the Rock Island on October 11, 1979. A series of off-the-record discussions was commenced with BRAC on October 13, 1979, and with UTU on October 15, 1979. These discussions provided the Board with further views on the issues in dispute, and with reactions to what had been presented by the other side in each of the disputes.

The Board commenced intensive mediation efforts on October 16, 1979. While these efforts were helpful in narrowing the areas of dis-

⁴ The case was docketed as NMB Case No. A-10324.

⁵ These cases were docketed as NMB Case Nos. A-10303 and A-10287, respectively.

pute, several key issues remained unresolved. The Board therefore concluded that the best course of action in aiding the parties to reach a final agreement would be to make recommendations and urge their acceptance as a basis for settling all unresolved issues. During the following two days, these recommendations were presented to the parties. On October 18, 1979, they were accepted as a basis for agreement on all unresolved issues.

IV. ISSUES

Out of this long history of unsuccessful negotiations and mediation efforts, there emerged two major issues. On the one hand, the Rock Island, experiencing severe financial difficulties, was determined to obtain substantial relaxation of work rules which it insisted were inhibiting its ability to effectively operate its rail system. On the other hand was an equally determined adherence by the labor organizations to the preservation of the principle of full retroactivity in this industry. Both BRAC and UTU were seeking application of some benefits of their national wage settlements with NRLC, some aspects of which went back to January 1, 1978.

In the case of BRAC-represented employees, the period of retroactivity ended on October 5, 1979, when BRAC returned to work under the ICC Directed Service Order. In the case of UTU-represented employees, the period of retroactivity ended on May 1, 1979, when national wage rates were implemented on the Rock Island pursuant to the May 23, 1979, agreement reached under the auspices of the National Mediation Board.

As early as 1977, the Carrier contended that it could not and would not pay any retroactive wages because of its precarious financial condition, as evidenced by its bankruptcy and the creditors' demand for liquidation of the railroad. It was the Rock Island's position in negotiations that, while retroactive pay was out of the question, it would, upon necessary rules modifications, pay the national wage scale under the following conditions:

- A. The full national wage scale would become effective on January 1, 1978, if settlement was reached in 1977.
- B. The full national wage scale would become effective on the first day of the calendar month in which negotiations were concluded, for settlements reached on or after January 1, 1978.

The Rock Island recognized in 1977 that certain unions negotiating at the national level might not reach agreement with the NRLC until some time after January 1, 1978, and that the amount due its employees under the first alternative could not be calculated until national

settlement. It did not view payment of the increased wages as retroactive because agreements under the first alternative above were reached prior to the effective dates specified in the National Agreement, and the Carrier had the benefit, as of January 1, 1978, of the rule relief sought. Thus, cost savings could begin to provide the resources needed to pay the national rate, and the funds could be realized pending resolution of the national rate. Five unions settled their negotiations with the Rock Island in 1977 under the first alternative.

Seven unions settled with the Rock Island in 1978 or 1979. In each of those instances, the national wage rate became effective on the first day of the calendar month in which agreement was reached. Retroactivity was "waived" in the various agreements for periods ranging from two to twelve months. In no case did the Rock Island agree to pay the higher rate retroactive to January 1, 1978, although the Carrier did agree in these negotiations to do so if either BRAC or UTU was successful in obtaining retroactivity. Rock Island based its unwillingness to pay retroactive wages on the ground that if it did not obtain any rule relief from these unions during the retroactive period, it would experience no gain in productivity to help offset the higher operating costs that would result. The Carrier asserted that BRAC and UTU could have received the national wage rate at any time had they been willing to reach agreement on certain proposed rules and rules changes sought by the Rock Island.

Finally, the Carrier asserted that it could not pay retroactive wages, even if it desired to do so, because it had no cash, and would not be able to generate sufficient funds in the foreseeable future. Rock Island estimated that the total cost of retroactivity would approximate \$14 million.

BRAC rejected the Rock Island's arguments primarily on the ground that retroactive wage adjustments are a traditional and expected part of collective bargaining in the railroad industry. That Union asserted that the Rock Island has a moral, if not legal, obligation to make the full wage pattern of the National Agreement applicable to the Rock Island.

BRAC also viewed the bargaining context between itself and the Carrier as being substantially different from the negotiations involving the unions that had settled with the Rock Island. It contended that those unions were asked to make minor or insignificant rules changes that had little impact on earnings or employment in those crafts or classes. By contrast, the demands made upon its members would, if granted, lead to a significant reduction in the number of BRAC-represented employees. In particular, BRAC pointed to the Rock Island's proposals regarding the Train Order Rule and the Holi-

day Work Rule. The greater complexity of the negotiations involving BRAC would, under the best of circumstances, have led to prolonged and difficult negotiations. This being so, it was the Union's position that it was unfair to penalize its members by refusing to consider retroactive wages as an essential part of the final agreement.

The UTU arguments were in many respects similar to those of BRAC. The rules sought by the Rock Island, particularly in the area of Short Haul-Gathering Service, were complex and far more extensive than the rules changes sought from the non-operating unions. The Rock Island-UTU negotiations were further hampered by the need to coordinate the negotiations among the trainmen, enginemen, and switchmen, and by the interrelationship of UTU with other crafts, especially the Brotherhood of Locomotive Engineers.

Moreover, UTU asserted that the Rock Island's failure to grant retroactivity in December 1978, at the time that all other issues had been tentatively resolved, was the major factor in the mounting retroactivity claim.

Ancillary issues existed in both disputes, generally involving the Carrier's need for productivity savings to generate resources to pay for the settlement.

In the case of UTU, the most important productivity issue was the Rock Island's proposed Short Haul and Gathering Service agreement. The Carrier wanted to institute these new services as a means of generating additional business. Institution of these services would permit the Rock Island to compete more successfully with the trucking industry.

Articles X and XI of the UTU National Agreement were also in issue, because Rock Island wanted the benefits of the relief afforded to other railroads under the National Agreement.

In the BRAC dispute, the Rock Island sought to suspend for a time the penalty provisions of the Train Order Rule, so that operating craft employees could write train orders. The Carrier also wanted to add an exception to the Rule which would make it inapplicable at blind sidings, upon reinstatement of the Rule.

The Rock Island also sought to amend the Holiday Work Rule to eliminate the requirement that every job be filled on a holiday. It also wanted to reduce the entry rates for new employees during the first two years of employment.

BRAC sought to increase per diem and mileage allowances, and to increase to coverage of the Job Stabilization Program by covering employees who entered service on the Rock Island prior to 1972. BRAC also sought to apply the National Agreement on the Rock Island, except to the extent that the parties provided otherwise.

V. THE BOARD'S RECOMMENDATIONS

The Recommendations made by this Emergency Board were predicated on two conditions: (1) That the Rock Island would resume operations as a reorganized viable entity bearing the approval of the ICC and the District Court; and (2) That there would be a relaxation by the labor organizations of certain work rules, and a willingness to accept innovations, both of which would generate additional productivity savings.

These Recommendations set forth below, were accepted by the parties as the basis for settlement.

Emergency Board No. 191 recommends the following settlement of the dispute between the Chicago, Rock Island and Pacific Railroad and the United Transportation Union:

I. Retroactive Pay

A. The Rock Island will pay full retroactivity under the terms of the National Agreement for the period of January 1, 1978, to April 30, 1979, upon assumption of operations by a successor company under a plan of reorganization approved by the Interstate Commerce Commission and confirmed by the U. S. District Court.

B. Payments will be made in sixteen (16) equal monthly installments, beginning during the first month of operations as outlined in paragraph I.A. above.

II. Wages, COLA, Rules

A. The parties agree to adoption of the May 23, 1979, Memorandum of Agreement and Letters of Understanding covering increased wage rates, COLA, and rule changes affecting the UTU (T), (E), and (S) crafts, effective upon assumption of operations.

B. Articles X and XI of the National Mediation Agreement of August 25, 1978, shall be adopted. National interpretations of these articles shall be applied.

C. The Rock Island will withdraw the Carrier's promulgated rules of August 29, 1979, covering the UTU (T), (E), and (S) crafts.

III. Short Haul-Gathering Service

The parties will adopt the May 23, 1979, Short Haul-Gathering Service Agreement. The UTU General Chairmen will meet with the Rock Island to draft the necessary implementing agreements for the principles contained in the Short Haul-Gathering Service Agreement. The parties will negotiate any additional changes, amendments, or clarifica-

tions as may be necessary to assure the success of these new services.

IV. Interchange

The parties agree to negotiate a settlement of the "interchange" dispute.

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Emergency Board No. 191 recommends the following settlement of the dispute between the Chicago, Rock Island and Pacific Railroad and the Brotherhood of Railway and Airline Clerks:

I. Retroactive Pay

A. The Rock Island will pay full retroactivity under the terms of the National Agreement for the period of January 1, 1978, to October 5, 1979, upon assumption of operations by a successor company under a plan of reorganization approved by the Interstate Commerce Commission and confirmed by the U.S. District Court.

B. Payments will be made in sixteen (16) equal monthly installments, beginning in the first month of operations as defined in paragraph I.A. above.

II. Wages

A. The wage and COLA provisions as set forth in the National Agreement between BRAC and the National Railway Labor Conference, bearing an effective date of January 30, 1979, shall be applied to the employees, to become effective upon assumption of operations. In applying this section, wage increases and COLA due after said start-up date will be applied on the dates set forth in the National Agreement.

B. Article VIII—Entry Rates, of the National Agreement, effective January 30, 1979, is hereby modified to provide for entry rates of 85% of the basic rate during a new employee's first year of service and 92% for the second year of service, effective upon assumption of operations.

III. Per Diem & Mileage

All existing rules and agreements dealing with traveling away from assigned headquarters point will be amended to provide:

(A) Lodging expense provided for in Article I, Section A(3) shall be increased from \$4.00 per day to \$7.00 per day;

(B) Meal allowances provided for in Article I, Sections B(1), B(2) and B(3) shall be increased from \$1.00, \$2.00, and \$3.00 per day respectively to \$1.75, \$3.50 and \$5.25, respectively;

(C) The allowance for the use of an employee's personal automobile provided for in Article I, Section C(2) shall be increased from twelve (12) cents a mile to fifteen (15) cents a mile; and

(D) The maximum reimbursement for meals and lodging costs provided for in Article II, Section B shall be increased from \$7.00 per day to \$12.25 per day.

IV. Job Stabilization

The applicable Job Stabilization Agreement (February 7, 1967), will be revised and amended to provide:

(A) Employees having an employment relationship with the carrier as of December 31, 1971 shall be placed in protected status;

(B) The protected rates of pay for all employees covered by the revised Agreement shall be the rate of pay of the position occupied on August 1, 1979, or the protected rate in effect, whichever is higher, subject to subsequent increases; and

(C) In instances where employees are drawing furlough allowances, the allowance will be reduced by any compensation the employee receives under the Railroad Unemployment Insurance Benefits Act, and any compensation received from full time employment in outside industry, obtained following the date of furlough.

(D) Any employee on furlough as of the date of assumption of operations will be covered upon return to service.

(E) A protected employee shall have his protected allowance suspended after five years in furlough status, provided, however, that the full protected status of such employee shall be fully restored upon recall to service.

(F) The parties will negotiate guidelines which will be applied in the consolidation of seniority districts.

V. Work Rules

A. *Train Order Relief.* During the first 24 calendar months immediately following assumption of operations, BRAC agrees to waive the three-hour and eight-hour penalty provisions of Rule 17—Train Orders, provided however, that during said 24 month period, no position handling train orders will be abolished because of or as of a result of this waiver.

Prior to the end of the 24 month period, the parties will review the experience under the waiver, with a view to possible extension or modification.

Upon expiration of the 24 calendar month period referred to herein, any work diverted from the craft or class here represented will be returned to coverage by this Agreement, at which time the Rule 17, Paragraph 3(2), will be amended to provide the following exception: "3(2)(d)—That

when train orders are relayed from the nearest open train order office on the seniority district involved to train or engine service employees at blind sidings."

B. *Holiday Work.* Article 54—Holiday Work, will be amended by addition of the following:

(a) When a holiday falls on a work day of a regularly assigned employee and his (her) position is to be worked, the regular employee is entitled to be used.

(b) When necessary work on two or more positions on the same shift is to be performed by one employee, it will be offered in seniority order to employees occupying the positions involved with the highest rate of pay of the position worked.

(c) When positions to be filled are vacant because of the regular occupant being permitted to lay off, or because there is no regularly assigned incumbent on the holiday, the opportunity to fill the vacant position will be offered to qualified regularly assigned employees on the same shift at the same location whose positions were pulled off or combined with others. If not filled in this manner, the vacancy will be filled in accordance with Article VIII or IX of Rule 13.

C. *Vacations.* The vacation provisions of the National Agreement referred to above will be made effective and applied upon assumption of operations, but in no event earlier than January 1, 1980.

D. The Rock Island will withdraw the Carrier's promulgated rules of August 29, 1979, covering the BRAC-represented employees.

VI. National Agreement

The parties agree that the National Agreement between BRAC and the National Railway Labor Conference signed on January 13, 1979, and effective nationally on January 30, 1979, shall be applied except to the extent set forth above.

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Respectfully submitted,

JAMES J. REYNOLDS, Chairman
IDA KLAUS, Member
NICHOLAS H. ZUMAS, Member

APPENDIX A
EXECUTIVE ORDER 12159

CREATING AN EMERGENCY BOARD TO INVESTIGATE
DISPUTES BETWEEN THE CHICAGO, ROCK ISLAND, PACIFIC
RAILROAD & PEORIA TERMINAL COMPANY
AND
BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION
EMPLOYEES; and the UNITED TRANSPORTATION UNION

Disputes exist between the Chicago, Rock Island, Pacific Railroad & Peoria Terminal Company and certain of its employees represented by both the Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express and Station Employees; and the United Transportation Union.

These disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

These disputes in the judgment of the National Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service:

NOW, THEREFORE, by the authority vested in me by Section 10 of the Railway Labor Act, as amended (45 U.S.C. 160), it is hereby ordered as follows:

1-101. *Establishment of Board.* There is established a board of three members to be appointed by the President to investigate these disputes. No member of the board shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier.

1-102. *Report.* The board shall report its findings to the President with respect to these disputes within 30 days from the date of this Order.

1-103. *Maintaining Conditions.* As provided by Section 10 of the Railway Labor Act, as amended, from this date and for 30 days after the board has made its report to the President, no change, except by agreement, shall be made by the Chicago, Rock Island, Pacific Railroad & Peoria Terminal Company, or by its employees, in the conditions out of which these disputes arose.

THE WHITE HOUSE, September 20, 1979

/s/ JIMMY CARTER

