Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

CREATED JULY 18, 1947

UNDER SECTION 10

OF THE RAILWAY LABOR ACT, AS AMENDED

To investigate and report on an unadjusted dispute between the Southern Pacific Co. (Pacific Lines), Northwestern Pacific Railroad Co., San Diego & Arizona Eastern Railway Co., and their employees represented by the Brotherhood of Locomotive Engineers

JULY 30, 1947

(No. 47)

REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD CREATED JULY 18, 1947, UNDER SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED, TO INVESTIGATE AND REPORT ON AN UNADJUSTED DISPUTE BETWEEN THE SOUTHERN PACIFIC CO. (PACIFIC LINES), NORTHWESTERN PACIFIC RAILROAD CO., SAN DIEGO & ARIZONA EASTERN RAILWAY CO., AND THEIR EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

On July 18, 1947, the President created an Emergency Board pursuant to the provision of section 10 of the Railway Labor Act, as amended, to investigate and report within the time allowed by said law on disputes between Southern Pacific Co. (Pacific Lines), Northwestern Pacific Railroad Co., and the San Diego & Arizona Eastern Railway Co., and their employees, represented by the Brotherhood of Locomotive Engineers. On July 21, 1947, he appointed as members of this Emergency Board, Grady Lewis of Washington, D. C., Leverett Edwards of Oklahoma City, Okla., and Paul A. Dodd of Los Angeles, Calif.

The Board as thus constituted proceeded to San Francisco, Calif., and met in the Palace Hotel, 9:30 a. m., on July 23, for the purpose of organization. It designated Ward & Paul as official reporters for the Board and selected Grady Lewis to act as chairman.

After such organization, hearings were commenced in room 2127 of the Palace Hotel at 10 a. m., on July 23, 1947, at which hearing the Brotherhood of Locomotive Engineers was represented by H. C. Hobart, assistant grand chief engineer, Cleveland, Ohio; P. O. Peterson, chairman, general committee of adjustment, Brotherhood of Locomotive Engineers, San Francisco, Calif., and C. S. Graham, first vice chairman, general committee of adjustment, Brotherhood of Locomotive Engineers, Bakersfield, Calif.

On behalf of the Southern Pacific Co., the appearances were: J. W. Corbett, general manager, Southern Pacific Co. (Pacific Lines), San Francisco, Calif., J. G. Torian, manager of personnel, Southern Pacific Co. (Pacific Lines), San Francisco, Calif., Burton Mason, general attorney, Southern Pacific Co. (Pacific Lines), San Francisco,

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Calif., and E. L. Van Dellen, attorney, Southern Pacific Co. (Pacific Lines), San Francisco, Calif.

On behalf of the Northwestern Pacific Railroad Co., the appearances were: C. A. Veale, vice president and general manager, Northwestern Pacific Railroad Co., San Rafael, Calif., Burton Mason, general attorney, Northwestern Pacific Railroad Co., San Francisco, Calif., and E. L. Van Dellen, attorney, Northwestern Pacific Railroad Co., San Francisco, Calif.

On behalf of the San Diego & Arizona Eastern Railway Co., the appearances were: Burton Mason, general attorney, San Diego & Arizona Eastern Railway Co., San Francisco, Calif., and E. L. Van Dellen, attorney, San Diego & Arizona Eastern Railway Co., San Francisco, Calif.

The Board remained in session in San Francisco through July 30 in public hearings and executive session during which time this report was prepared for submission.

History of Dispute

The strike ballot as circulated by the Brotherhood on January 6, 1947, presents a total of some 498 separate items. The first 20 cases of the ballot affect rules and working conditions of the employees represented by the Brotherhood. The others present grievances by reason of the application of the working rules now in effect on the property.

The 20 cases affecting rule changes are 20 of 27 cases that were the subject of inquiry of an Emergency Board appointed March 28, 1945, from the National Railway Labor Panel, pursuant to Executive Order 9172. That Board dealt with an unadjusted dispute then existing between the Southern Pacific Co. (Pacific Lines) and its employees represented by this brotherhood. That Board held extensive hearings in San Francisco and filed its report July 12, 1945. That report is exhaustive and gives a full analysis of each of the 27 cases investigated by that Board. The carrier indicated its willingness to accept the report of that Board in full, as indicated by its letter of August 7, 1945, addressed to the Chairman of the National Railway Labor Panel. The recommendations of the Board were never adopted by the parties.

The remaining cases constitute various categories of claims such as time claims, grievances, run-around, and claims of like nature that have arisen in the application of the present working agreement adopted by the parties. These claims date from 1938 to and through 1945, having accumulated in large numbers against the three carriers involved in this dispute.

After the circulation of the strike ballot and affirmative vote thereon, the strike was postponed by action of the brotherhood and, pursuant to the request of the Mediation Board for further conference, conferences thereon were held in Washington, D. C., and subsequently in San Francisco, and mediation efforts continued under the auspices of the National Mediation Board.

During the progress of the mediatory efforts of representatives of the National Mediation Board, the brotherhood made a proposal under date of July 11, followed by a proposal submitted by the carriers under date of July 16. This latter proposal served as a basis for the final agreement drawn up between the parties under date of July 21, which resulted in a return to work of the employees represented by the brotherhood and an indefinite postponement of the strike.

Discussion

Examination of the recommendations of the Panel Emergency Board of 1945 discloses that in general the employees were unsuccessful in obtaining from that Board a favorable recommendation. The unfavorable recommendations of this Board continued to serve as a basis of dissatisfaction among the membership of the brotherhood and finally culminated in the listing of the first 20 cases on the strike ballot of January 6, 1947. The remaining cases on the Strike ballot were made up of the accumulation of grievance items hereinabove referred to.

Although the parties continued to discuss through communications and conferences the matter of the first 20 cases as listed on the strike ballot of January 6, 1947, by July 16 they had not been able to reach an agreement with respect to the dispute involved in these cases largely because the carriers insisted on the one hand that the recommendations of the 1945 Emergency Board be adopted in their entirety, while the brotherhood, on the other hand, insisted upon the direct negotiation of these recommendations, case by case. This difference of desired approach to the disposition of these cases led to the impasse which, at 6 p. m., on July 21, resulted in work stoppage of the affected employees.

On July 16, 1947, the Southern Pacific Co. (Pacific Lines) presented to the brotherhood a proposal which modified its previous position with respect to the disposition of the first 20 cases on the strike ballot. During conferences which took place throughout several days following, the brotherhood and the carriers finally entered into an agreement which was signed after the work stoppage had been in effect for approximately 6 hours. This agreement resulted in a return to work and "indefinite postponement of the strike." This agreement is in

the record as carriers' exhibit 5, to which reference is hereby made, and provides for disposition of the remaining items by direct negotiations of the parties. It stipulates further that the Brotherhood "agrees to indefinitely postpone the effective strike date with the definite understanding that conferences will commence promptly between the representatives of the Brotherhood of Locomotive Engineers and the Southern Pacific Co. (Pacific Lines) on this docket of cases."

Similar agreements were entered into between the brotherhood and the other carriers involved in this dispute.

It is necessary at this point to allude to some of the factors which the Board finds contributed to the vast accumulation of undisposed of grievance cases which were listed on the strike ballot. The principal cause of the accumulation of the large number of undisposed of claims is attributable directly to the procedure adopted by the First Division of the National Railroad Adjustment Board. That Board does not, under its adopted rules, write reasoned opinions when preparing bipartisan awards, nor does it encourage such opinions by referees assigned to it. Such practice results in the accumulation of a vast number of awards that have no precedent value and prove of no assistance to application of rules purported to be interpreted by the awards when employed by the parties on the property. The strike ballot recites specific awards of the First Division of the Adjustment Board as being authority for the allowance of the claim. By reason of the almost telegraphic brevity of the awards cited, it is, in most instances, impossible to determine the controlling facts, much less the reasoning that prompted the award.

Many of the cases represented in this accumulation of unsettled claims have been held in abeyance by the parties in this dispute awaiting awards of the First Division which would have a precedent value and which would be of interpretive assistance in the determination of claims referred to, but which awards are not forthcoming in form suitable to be so utilized. We are of the opinion that should the rules of procedure of the First Division of the National Railroad Adjustment Board, as they now exist, be amended to provide for fully discussed and reasoned opinions, the same would be of inestimable value to the officials of both employer and employee charged with the responsibility of administering the working agreement and passing upon claims such as are present in this case.

At the hearings before the Board there was considerable discussion as to the meaning of certain language contained in the agreements which are above referred to, under which "the Brotherhood agrees to indefinitely postpone the effective strike date," and so forth. Following this language appears that portion of the contract under which the

parties agree to engage in continuous conferences looking toward the disposal of the grievance items which are not settled by these contracts. Much apprehension of the Board arises from the fact that should the conferences provided for not ultimately result in agreed settlements of these grievance items, and the effective date of the strike being indefinitely postponed, rather than withdrawn and cancelled, a further work stoppage might result.

It is the opinion of the Board that this entire controversy would be disposed of in far more desirable finality had these agreements distinctly provided for the submission of such of the grievance cases as could not be disposed of by direct negotiation to a final arbiter or forum therein designated, with the decision to be final and accepted by both parties. These agreements, however, were drawn up and executed under emergency conditions in a sincere effort, we believe, on the part of both parties to accomplish a termination of the work stoppage which was then already in progress.

The Railway Labor Act, as amended provides full and adequate machinery for the disposal of grievance cases. This is true notwithstanding the criticism we have made of certain rules of procedure of the First Division of the National Railroad Adjustment Board. Should the parties to this dispute utilize this machinery in the event of the failure of direct negotiations over any one or more of the grievance items, there would be no cause for apprehension, and this Board would be in position to report that a final and complete settlement of the difficulties, which gave rise to the appointment of this Board, had been accomplished.

Since, in our opinion, the agreement leading to the recall to work of the engineers is deficient in this respect, we are recommending that steps be taken which will assure the full utilization of this machinery. This is especially desired since the most that can be said of the agreement is that it is an agreement to negotiate most of the questions in dispute.

On the 18th day of July 1947, the National Mediation Board advised the President that in its judgment interstate commerce within the States of Arizona, California, Louisiana, Nevada, New Mexico, Oregon, Texas, Utah, and Washington was substantially threatened to a degree such as to deprive that portion of the country of essential transportation service. The President thereupon issued his Executive order creating an Emergency Board to investigate the disputes between the parties and named the personnel thereon on July 21. Notwithstanding such report to the President by the National Mediation Board, and notwithstanding the creation of the Board and the appointment of personnel thereof, pursuant to section 10 of the Rail-

way Labor Act, as amended, the representatives of the Brotherhood did not see fit to withdraw their work stoppage order in compliance with the requirements of the law.

Attention is directed to the fact that nowhere in the working rules of any of the parties is there any provision for a limitation of time within which a claim for violation of the working agreement must be finally disposed of. As a result of the absence of such provision, these claims are held dormant.

If provisions were to be found in the contracts that would place limitation upon the length of time that might elapse before the settlement of the grievance, the possibility of such a vast backlog of claims could not exist. Paragraph (i) of section 3 of the Railway Labor Act, as amended, specifically provides that after such case has been handled through the chief operating officer of the carrier designated to handle such disputes without adjusting the claim, the dispute may be referred by the parties or by either party to the appropriate Division of the Adjustment Board for final disposition. It will thus be seen that the law permits either disputant to process the claim to a final settlement before the Adjustment Board, rather than to indefinitely postpone action as is the practice with these carriers.

As stated above, we are much disturbed that there is no agreement in existence between the parties that insures a final and complete disposition of all the differences. Moreover, the agreement under which the parties have agreed to negotiate their differences expresses no length of time for the carrying on of such negotiations, nor does it in anywise define when either of the parties may conclude that the other one is not attempting to negotiate in good faith, permitting either party to withdraw from further consideration of the claim, thus again reviving the very obvious shortcoming of the agreement that it only provides for a postponement of the strike rather than for its complete settlement. Doubts as to the successful outcome of negotiations, as provided for under the July 21 agreement, we believe, are demonstrated by virtue of the fact that the brotherhood is still unwilling to cancel the strike ballot.

The Board was advised during the San Francisco hearings by representatives of the brotherhood that strike ballots of other operating groups against carriers involved in this case are now outstanding and are again the result, at least in part, of heavy dockets of grievances which have been accumulating over a period of time.

In spite of apprehension of this Board, arising from the circumstances just detailed, it is obviously impractical, if not impossible, because of time limits imposed by law, for this Board to remain in session pending the complete settlement of all of the grievances exist-

ing in this case. It is for this reason we urge that appropriate steps be taken to assure a final settlement of the dispute, in case negotiations as provided for under the July 21 agreement fail, by utilizing the machinery provided by the Railway Labor Act, as amended.

In summary, we find that the parties are bound to an agreement providing for final settlement of the first 20 cases listed on the strike ballot, and to negotiate directly and continuously for the settlement of all remaining cases. We find further that there is no assurance, except for the promised good faith expressed to the Board during its San Francisco hearing, that the parties will be able to agree upon final disposition of the issues outstanding. Finally, we find that the call for strike action issued by the brotherhood under date of January 6, 1947, has not been canceled, but has merely been indefinitely postponed.

Recommendations

In view of the circumstances as briefly outlined above, the Emergency Board recommends as follows:

1. That the working agreements between the parties be amended to limit the length of time an alleged violation of the agreements may be handled on the property before final adjustment.

2. That the First Division of the National Railroad Adjustment Board amend its rules of procedure to require a fully reasoned opinion on each award made, to the end that the awards, when so made, may be used as a precedent by the parties at interest in their administrative application of such awards on the property affected.

3. That until the recommendations contained in No. 1 and No. 2 above are effected, all claims remaining on the strike ballot and not disposed of by direct negotiations be submitted to the First Division of the National Railroad Adjustment Board for a final disposition of those claims.

4. By reason of the possible adverse effect that the present agreement of indefinite postponement may have upon the negotiations, and by reason of the further fact that by adoption of recommendation No. 3 a complete settlement of the dispute is provided, we earnestly recommend an unqualified cancellation of the call for strike action.

Respectfully submitted,

Grady Lewis,
Chairman.
Paul A. Dodd,
Member.
Leverett Edwards,
Member.

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