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RAILWAY LABOR DISPUTES

FEBRUARY 19, 1926.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. COOPER of Ohio, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H. R. 9463]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 9463) to provide for the prompt disposition of disputes between carriers and their employees, and for other purposes, having considered the same, report thereon with a recommendation that it pass.

The bill was introduced as the product of negotiations and conferences between a representative committee of railroad presidents and a representative committee of railroad labor organization executives, extending over several months, which were concluded with the approval of the bill, respectively, by the Association of Railway Executives and by the executives of 20 railroad labor organizations. As introduced, it represented the agreement of railway managements operating over 80 per cent of the railroad mileage and labor organizations representing an overwhelming majority of the railroad employees.

During the hearings conducted by the committee it was conceded by all concerned that the enactment of this agreement into law would impose upon the parties to the agreement the moral obligation to settle their differences in the manner provided by law, so as to insure to the public continuity and efficiency of interstate transportation service, and to protect the public from the injuries and losses consequent upon any impairment or interruption of interstate commerce through failures of managers and employees to settle peaceably their controversies. There are also legal obligations which would be accepted by and imposed upon the parties by the proposed law that afford further guaranties of improved and continuous transportation service and protection of the public interest therein.

The principal point impressed upon the committee during the hearings was the desirability of giving the managers and employees of

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this most important national industry the aid and cooperation of the legislative, executive, and judicial power of the Government in the settlement of industrial controversies by the means which practical men, who have devoted their lives to this industry, believe are best adapted to maintain satisfactory relations between employers and employees.

The need for an impetus given to the proposed legislation are clearly indicated in the following extracts from the Republican and Democratic platforms in the national election of 1924 and from the three messages of the President to Congress in December of 1923, 1924, and 1925.

The Republican platform of 1924:

The labor board provision of the present law should be amended whenever it appears necessary to meet changed conditions. Collective bargaining, mediation, and voluntary arbitration are the most important steps in the maintaining peaceful labor relations and should be encouraged. We do not believe in compulsory action at any time in the settlement of disputes. Public opinion must be the final arbiter in any crisis which so vitally affects public welfare as the suspension of transportation. Therefore the interests of the public require the maintenance of an impartial tribunal which can in an emergency make an investigation of the facts and publish its conclusion. This is essential as the basis for popular judgment.

The Democratic platform of 1924:

The labor provisions of the act (transportation act, 1920) have proven unsatisfactory in settling differences between employer and employee. * * * It must therefore be so rewritten so that the high purposes which the public welfare demands may be accomplished.

The President's message, December 6, 1923:

The settlement of railroad labor disputes is a matter of grave public concern. The labor board is not altogether satisfactory to the public, the employees, or the companies. If a substantial agreement can be reached among the groups interested there should be no hesitation in enacting such an agreement into law.

The President's message, December 3, 1924:

Another matter before the Congress is legislation affecting the labor sections of the transportation act. Much criticism has been directed at the workings of this section and experience has shown that some useful amendment could be made to these provisions.

It would be helpful if a plan could be adopted which, while retaining the practice of systematic collective bargaining with conciliation and voluntary arbitration of labor differences, could also provide simplicity in relations and more direct local responsibility of employees and managers. But such legislation will not meet the requirements of the situation unless it recognizes the principle that the public has a right to the uninterrupted service of transportation, and therefore a right to be heard when there is danger that the nation may suffer a great injury through the interruption of operations because of labor disputes. If these elements are not comprehended in proposed legislation, it would be better to gain further experience with the present organization dealing with these questions before undertaking a change.

The President's message, December 5, 1925:

I am informed that the railroad managers and their employees have reached a substantial agreement as to what legislation is necessary to regulate and improve their relationship. Whenever they bring forward such proposals, which seem sufficient also to protect the interests of the public, they should be enacted into law.

It is gratifying to report that both the railroad managers and railroad employees are providing boards for the mutual adjustment of differences in harmony with the principles of conferences, conciliation, and arbitration. The solution of these problems ought to be an example to all other industries. Those

who ask the protections of civilization should be ready to use the methods of civilization. * * *

The manifest inclination of the managers and employees of the railroads to adopt a policy of action in harmony with these principles marks a new epoch in our industrial life.

On January 7, 1926, representatives of the carriers and the employees informally reported to the President that they had agreed upon the draft of legislation embodying a substitute for Title III of the transportation act, 1920. And on January 8, identical bills expressing this agreement of the parties were introduced in the House and Senate, respectively, by the chairman of the Committee on Interstate and Foreign Commerce of the House and the chairman of the Committee on Interstate Commerce of the Senate.

The committee has held extended hearings giving ample opportunity to the proponents and opponents of the bill to present their views. In addition to the representatives of the carriers and their employees, the chairman of the executive council of the National Civic Federation presented testimony in support of the bill. The American Short Line Railroad Association offered a statement to the effect that the short-line railroads did not oppose the enactment of the proposed law.

Representatives of various associations of manufacturers presented suggestions for a few amendments which were given careful consideration. The bill provides in brief as follows:

(1) It is made the duty of all railroad managers and employees to exert every reasonable effort to make and maintain agreements.

(2) All disputes shall be considered first in conference between representatives designated and authorized so to confer respectively by the carriers and by the employees thereof interested in the dispute.

(3) Representatives shall be designated in such manner as the parties themselves shall determine "without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other."

(4) Disputes between employers and employees are divided into three classes:

(*a*) Disputes over grievances or the interpretation or application of agreements.

(*b*) Disputes over proposed changes in agreements concerning rates of pay, rules of working conditions.

(*c*) All other disputes.

(5) All disputes must be considered first in conference, but if not settled in conference disputes in class *b* and *c* are considered directly by the Government board of mediation. Disputes in class *a* if not settled in conference must be referred to an adjustment board and are only considered by the board of mediation if not decided by the adjustment board.

(6) Boards of adjustment must be created by agreement, which may be between an individual carrier and its employees or between a group of carriers and employees or between all the carriers and their employees.

(7) The bill provides for a machinery of contract and adjustment between the parties, but also leaves them free to set up "such machinery of contract and adjustment as they may mutually establish." If, however, they are unable to settle their differences either under

the machinery provided in the bill or an alternative machinery agreed upon, the bill provides that either party may invoke the aid of the board of mediation—a public body—or the board of mediation may intervene of its own motion, in order to promote the public interest in the settlement of disputes.

(8) A board of mediation is created composed of five members appointed by the President by and with the advice and consent of the Senate, with the duty to intervene at the request of either party or on its own motion in any unsettled dispute, whether it be a (class *a*) dispute not decided in conference or by the appropriate adjustment board or a dispute over changes in rates of pay, rules or working conditions (class *b*) or any other dispute (class *c*) not settled in conference.

(9) If the board of mediation is unable to bring about a settlement, it is required to seek to induce the parties to submit the controversy to arbitration.

(10) Boards of arbitration are provided for when the parties consent to arbitrate. The provisions of an arbitration agreement, the methods of selecting arbitrators, and the arbitration procedure are written in detail in the text of the bill. The bill provides that an arbitration award shall be made the judgment of the court, which judgment shall be final and conclusive on the parties.

(11) In the event that a dispute is not settled under the foregoing provisions of the bill, it is provided that the board of mediation, if in its judgment the dispute threatens substantially to interrupt interstate commerce, shall notify the President, who is thereupon authorized, in his discretion, to create a board to investigate and report to the President within 30 days from the date of its creation. It is also provided that after the creation of such a board and for 30 days after it has made its report to the President, no change except by agreement shall be made by the parties to the controversy in the conditions out of which the dispute arose.

The proponents of this bill have assured the committee of their conviction that the methods for voluntary settlement of disputes with the aid of Government mediators are so well adapted to insure the adjustment of differences, either through conference, mediation, or arbitration, that it should be seldom, if ever, necessary for the President to exercise the power conferred upon him to appoint an emergency board. The records of the success of mediation and arbitration under the Erdman and Newlands Acts considerably justify this conviction, which is also supported by the obvious good faith, the spirit of fair play, and of genuine regard for the public interest which characterized the negotiations of the parties and their presentations before the committee.

If, however, the full expectations of the proponents of the bill are not realized, and controversy threatens the interruption of interstate commerce, there is assurance of the protection of the public interest in this bill greater than has ever been offered in previous legislation. The President is empowered to create a board of outstanding representatives of the public who can investigate, with the aid of the permanent board of mediation, the Interstate Commerce Commission, the Department of Labor, and all other agencies of government, and bring to bear upon the parties the pressure of the highest governmental authority either to adjust their differences by

voluntary agreement or to consent to submit them to arbitration. If this pressure shall fail to in itself bring about a settlement, this Emergency Board will then be able in its report to give to the public adequate and intelligible information regarding the merits of the contentions of the parties, and to crystallize public opinion in support of that party or that program which should be supported in the public interest.

This temporary emergency board will be able to express and to mobilize public opinion to an extent impossible to any permanent board or any agency of Government which has been heretofore created for that purpose. It is also highly important to point out that during the period of investigation and for 30 days thereafter the parties to the controversy are bound under the proposed law to maintain unchanged the conditions out of which the dispute arose, thereby assuring the parties and the public that the emergency board will have the full and unembarrassed opportunity to exert its authority and fulfill its important function.

This bill is recommended for passage as both the most practical and advanced legislation for the settlement of industrial controversies that has been presented for the consideration of Congress.

ADDITIONAL VIEWS

This statement deals with an amendment which should be made, in my judgment, to this bill, in further protection of the public interest. It relates to a possible bearing of certain provisions upon freight and passenger rates. While not agreed to by the committee, it received a very substantial vote, and will be offered on the floor. It is needed—if for no other reason—in the interest of certainty. No ambiguity, no doubt as to what effect, legal and otherwise, will be given to the language used, should be countenanced on a matter of so much importance. That importance is offered in justification for calling attention to the matter in this report.

Broadly speaking, the general public has two primary interests in transportation, namely:

First: Continuity of efficient service.

Second: Reasonable rates.

The proposed amendment relates to the second of these interests. Under existing law the Interstate Commerce Commission is directed to fix a level of rates which "under honest, economical, and efficient management, and reasonable expenditures for maintenance, equipment, etc.," will permit the railroads, as nearly as may be, to earn a fair return upon their combined properties within various groups. Unwarranted expenditures would be reflected in undue rate burdens upon the public, if permitted to be included when rate levels are being determined. Necessarily, therefore, in the public interest, the power of the commission to inquire into the reasonableness of expenditures, whether of material or of labor, must be preserved unquestioned. I do not refer, of course, to power to set aside a wage settlement, or power to cancel an order for materials, but the power to refuse to pass on to the public any burden due to unwarranted expenditures.

In the case of voluntary wage agreements this power of the commission, in determining freight and passenger rates under the fair-return rule, is in no way disturbed by the bill. But what of wage adjustments that may be made by boards of arbitration? The bill provides for voluntary arbitration of disputes. Each side names an arbitrator and they may agree upon the third arbitrator. If they do not so agree, the board of mediation names the neutral arbitrator. The arbitration award becomes legally binding upon the parties, is to be filed with the Federal district court, and is given the force and sanctity of a court judgment. In the case of a wage adjustment so made would the power of the commission to safeguard the public interest be in any way limited? Could it not be argued that this arbitration award and the court judgment entered thereon are conclusive as to the reasonableness of the adjustment and that therefore the commission would be precluded, when determining a rate case, from any inquiry as to the merits of the adjustment? If so precluded, then by resorting to arbitration—entirely within the hands of the two parties and in which the public has had no voice—the carriers might escape responsibility before the public for the wage adjust-

ment, and the commission be foreclosed from any inquiry as to the merits of the adjustment.

To be sure, powerful consideration of self-interest and the practical difficulties of securing rate increases operate in providing resistance by the carriers to applications for wage increases. But under economic pressure the carriers may deem it expedient to yield to demands which they consider unwarranted. Instead of doing so by voluntary agreement and thus taking the responsibility before the public for their action, they might accomplish the same result by the medium of arbitration, and so without any collusion with representatives of employees. In which case is there any reason why the arbitration award should not be subjected to the same scrutiny as an agreement admittedly voluntary, when it makes its appearance before the commission in connection with application for rate increases to meet the new wages?

The amendment to be offered would add a proviso at the end of the provision dealing with arbitration awards (at the end of the line 20 on p. 24), as follows:

Provided, That nothing herein shall be construed to preclude the Interstate Commerce Commission from considering the merits of any such arbitration award when determining freight or passenger rates or other charges.

There are two questions here. Should the commission be foreclosed from such inquiry, and does the language of the bill without the amendment foreclose the inquiry? The first is, of course, the primary question. Those who believe that the commission, when fixing rates, should have no right to look into the merits of arbitration awards are, of course, opposed to the amendment. On the second question—the effect of the present language of the bill—there is disagreement. The uncertainty should be removed.

This bill embodies in the main the plans worked out by representatives of the carriers and of the employees for the peaceful settlement of their disputes. They have manifested a spirit of cooperation and mutual concession. The public is deeply interested in seeing this spirit of good will maintained. This is not a matter involving only two parties. The public is a third party, and the public interest must be paramount.

Railroad employees have the advantage which comes from compact organization and the occupying of a strategic position. The carriers have powerful advantages not necessary to enumerate. The right of both must be fully preserved. Certainly of equal importance is the preservation of every protection which the law can give to the unorganized general public.

There must not be any limitation upon the power of the commission to protect against unreasonable charges.

HOMER HOCH.

We concur in the desirability of the proposed amendment.

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