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RAILWAY LABOR RELATIONS

20 February 1947

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THE INDUSTRIAL COLLEGE OF THE ARMED FORCES

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LIEUT. COLONEL GODARD:

Gentlemen, although our speaker this morning is new to you, he is an old friend to several of us. In his undergraduate days at Penn State he was a classmate of one of our present students, Colonel Henderson. Another friend is Captain Stover, USN, who tried to drive a certain amount of economics into both their minds. Captain Stover was an instructor in Economics at Penn State at that time. Incidentally, Captain Stover, Colonel Henderson and I have met with Mr. Knight and we have agreed if he doesn't expose us, we won't expose him.

After leaving Penn State he entered the University of Pennsylvania and graduated with a law degree in 1934. Shortly after that, he joined the Pennsylvania Railroad legal staff, entering the field of labor relations.

You all know the definition of an "expert" and an "authority", so I am not going to call him either one of those. I will say to you that within five years of joining the legal department of the Pennsylvania Railroad he was chosen to represent all of the railroads in the eastern part of the United States, east of the Mississippi. That is a pretty big chunk of railroads, as far as I am concerned. He represented them in a labor case involving seven hundred million dollars, as I remember my figures. Later, he was in on the celebrated "Red Cap" case. He also was in on the Washington Terminal case.

His topic this morning is railway labor relations. I think he is going to give it pretty broad coverage. He will welcome any questions you may have.

It is both a privilege and a pleasure to introduce a man who, for twenty-five years, I have had the privilege of calling a friend, Mr. Guy Knight, Assistant General Couneral Counsel for the Pennsylvania Railroad.

Mr. Knight.

(Applause)

MR. KNIGHT:

It certainly helps your reputation to have a friend introduce you, doesn't it? I feel compelled to say, before I get underway

here, what a great pleasure it is to be here because, frankly, this is the first time I have ever had an opportunity to talk to men of the rank I see before me except in monosyllables.

There is a great deal of talk these days, and fortunately a great deal of thought, about the underlying philosophy of relations between management and labor. The attention that is being given to that subject is useful and, in fact, necessary in order to provide sound and analytical thinking as a basis for future action.

I mention that subject simply by way of eliminating it from what I am going to talk about. That elimination is necessary because I am not a personnel relations expert. I am a railroad lawyer. You know as much about those vague concepts as I do and I don't see that there is any point in trying to talk about them here.

You gentlemen may--and I suppose many of you undoubtedly will--be called upon to direct and actually deal with concrete problems in the field of relations between management and labor, either in plants or military establishments employing civilians, or in other ways. I suppose many of you will formulate procedures for handling those relations in the War and Navy Departments. So it is my thought to try to pass on to you some of the experiences that the railroads have had in dealing with actual practical problems in this field under the Railway Labor Act which is, to date, the most comprehensive and complete statutory system we have in this country for dealing with relations between magagement and labor. I shall attempt, therefore, to state generally what I think those problems are and try to explain how the statutes relating to railroads have dealt with them; what the experience of the railroads and the labor unions has been under that system; and then, if we have the time, try to point out what the defects in the system are.

I suppose that it is no longer open to question, at least in non-Government operations, that employees are entitled to a voice in fixing their wages and working conditions. I suppose it is also safe to say that the primary aim and object of a proper personnel relations policy, if we look at it purely from the management, dollar and cents, point of view, is so to deal with your employees that you get a proper quantity and quality of production at a fair cost for labor.

I do not mean to eliminate entirely from a proper personnel relations policy the necessity of looking upon your employees as a part of management and consequently being interested in their welfare and dealing with them on an unselfish basis; but, in the final analysis, if you have got to produce transporatation or manufactured products you are interested in getting a fair quantity and quality of production for a fair labor cost. That is what your personnel relations policy, if it is going to be satisfactory, has got to produce.

It is possible, under some circumstances, to get labor without having a proper personnel relations policy; but I submit to you it is never entirely satisfactory to do so. Those men who genuinely feel they are not being fairly and properly treated by their employer, have very little incentive to do good work, resulting in lowered production and poor work and a large and expensive turnover and consequently high costs of production.

At this point I feel compelled to say that mere propaganda on the part of an employer will never take the place of a proper personnel relations policy. You cannot satisfy that need by propaganda and devices like noontime shows music while you work, and things of that kind.

The attitude, as a matter of fact, of the employees toward that sort of thing is pretty well illustrated by an instance I remember. Several years ago I was attending a meeting here in Washington. There were a great number of railroad representatives and railroad labor representatives present. We were trying to work out a contract covering certain phases of dismissal pay when consolidations occurred between the railroads. The discussion had become considerably heated. One of the railroad presidents, in an attempt to pour oil on the troubled waters, said to one of these labor leaders, "Now, George, you know er love you." The labor leader said, "Yes, Mr. Smith, and we know what comes after loving, too."

One of the first requisites for satisfactory labor relations from the point of view of the employer and the employees--in fact, the public, as well--is equal bargaining power between the two. The undesirable results that occur when the scales of bargaining power are tipped too far in favor of management, is illustrated by conditions in existence forty or fifty years ago when men had very little security in their jobs and when their wages and working conditions were fixed, in many instances, by their employers, completely unilaterally.

Of course, the evils that follow the tipping of the scales in favor of labor are pretty obvious today. Whether the scales are tipped one way or the other depends pretty much upon the operation, I suppose, of the old law of supply and demand. In years of depression, when there is a great deal of competition between workers for jobs, then there is little likelihood of excessive or unfair demands on the part of labor, or of excessive or widespread strikes to enforce those demands.

Conversely, in times of prosperity when there is high competition among the employers to get workers and jobs are plentiful, then the actual bargaining power of employees is much greater and there is much more likelihood of excessive demands and strikes to enforce them.

I suppose if we lived in a Utopian state where all labor leaders and all managerial representatives could be relied upon to be fair and impartial in their relations with each other, and exercise pure statesmanship in those relations, maybe those scales would remain balanced. But lacking such a state--and God know we lack it--this equilibrium of bargaining power has got to be controlled somehow, so far as it is practically possible to do so, by regulation of some kind. Just as monopolies and combinations in restraint of trade are prohibited in business today, so, eventually, there has got to be some protection from excessive economic strength in the hands of unions. How this would be accomplished, of course, at the present time is a subject which involves a great difference of opinion. It is one that we cannot include in this talk, to any great extent. But if we start with the understanding that some equality of bargaining power is necessary, then the establishment and continuance of a satisfactory labor relations policy, it seems to me, depends basically on these five things:

First of all, a recognition of the right of employees to organize and to select, with complete freedom, their representatives to deal with management.

Second, a frank, open, and sincere acceptance of collective bargaining.

Third, the reduction to writing, in the form of agreements, the wages and the working conditions of employees so that those agreements will have some legal status.

Fourth, machinery for carrying on the negotiation of these agreements and for making changes in them, and for resolving controversies that arise between labor and management concerning the terms of the agreements covering wages and working conditions.

And, fifth, additional and entirely separate machinery for deciding disputes which arise as to the interpretation and application of those agreements.

Those principles have been written into railway labor legislation. Experience has shown, however, that that legislation is not perfect by any means. But most of its deficiencies exist through the failure of the machinery it provides to go far enough and be effective enough and not through any improper aims or objects. The most troublesome problems that arise are those involved in the settlement of disputes of two kinds, those arising out of the fixing of wages and working conditions and those having to do with the application of the labor agreements to particular situations.

The methods provided by the Railway Labor Act for handling those two general types of disputes form the basis of what I think we can most profitably discuss here. Preliminary to a discussion of the methods that are set up and the experience that the parties have had under them, under the Railway Labor Act, I would like to trace very, very briefly the history of railway labor legislation. I would like to do that, first, because I think some little background is necessary in order to understand what the present Railway Labor Act is trying to do and how it works; second, because it is interesting to see how ancient are some of the devices which are now being suggested as a general remedy for the present labor situation.

The first act of Congress dealing with the labor relations of railroads was signed by President Cleveland in 1888. It provided two methods for adjusting disputes. The first one was voluntary arbitration. That was dependent, of course, upon the consent of both parties. No provision was made for an enforcement of an arbitration award.

The second was investigation. Under that act the President was authorized to appoint a temporary commission to investigate the causes of labor disputes between railroads and their employees and to report its findings to the President of the United States. It involved no compulsion and relied simply upon public opinion.

During the ten years that that law was in effect the arbitration provisions were never used and the investigation provisions were used only once and that was during the Pullman strike, which many of us remember by reputation if for no other reason. In that case, it is interesting to note that the board of investigation that was appointed recommended to the President what it considered as the most effective machinery for settling these disputes. It recommended the appointment of a permanent commission which was to have the same authority with respect to labor disputes that the Interstate Commerce Commission has with respect to rates. In other words, it was practically intended to be the last word on the subject.

And, furthermore, it recommended the incorporation of labor unions.

Now these two recommendations are, as I say, interesting in view of the fact that many people are now urging that there ought to be labor courts. Of course, the incorporation of labor unions is a subject that is now under consideration; in fact, some bills have been introuduced into this session of Congress to require it. Whether the board of investigation that functioned then was ahead of its time in recommending these devices, or whether the present proponents of this legislation are behind theirs, is a subject that might call for a considerable difference of opinion. But, at

any rate, the fact is that as long as fifty years ago some experts in the field of labor relations thought those devices were necessary.

That act was superseded ten years later by another law. That act, known as the Erdman Act, introduced for the first time the policy of government mediation and conciliation in railway labor disputes. It provided that the U. S. Commissioner of Labor and the Chairman of the Interstate Commerce Commission should act as a Board of Mediation. It retained the provision for voluntary arbitration, but it strengtheded it by providing it could be enforced in court.

That act was superseded by another one (the Newlands Act) in 1913, which established a permanent Board of Mediation and Conciliation. We will see how, all through this legislation, there runs the idea of a lack of compulsion with respect to these so-called bargaining disputes. We have boards of mediation and conciliation of one kind or another that run through all those Acts. We finally get down to the system under the present act. I want to point out a little later what we think is wrong with that type of system for settling disputes.

Of course, all of you know that in 1917 the government took over the railroads and operated them under a Director-General set up various machinery for handling disputes on the railroads. He established Boards of Adjustment. Their function was to decide the other type of disputes, that is, those which arise out of the interpretation of the agreement.

He also established a Board of Railroad Wages and Working Conditions. The function of that board was to attempt to fix, by holding hearings and listening to the parties, the wages and working conditions. It had no power; in fact, neither of those boards had any power. They simply made recommendations to the Director-General; but he had power enough to enforce any recommendations they made.

Then the return of the railroads to private ownership, thank God!, was accomplished by the Transporatation Act of 1920. The machinery, set up by the government, under federal control disappeared with the authority of the Director-General. The Transportation Act provided also for boards of adjustment, but they were purely voluntary. They could only be set up by agreement between the railroads and their employees. A great many of them were set up. A lot of them were set up on the Pennsylvania Railroads and functioned for fifteen years, until the passage of the present Railway Labor Act.

The Transportation Act also established the so-called Railroad Labor Board. There, Congress made a very definite mistake, as it turned out. It combined, in that board, the function of deciding both of these types of disputes. In other words, that board had

authority to decide disputes involving the interpretation and application of agreements and it also had the authority to make recommendations, at least, with respect to the fixing of wages and working conditions. It had no final authority to force those recommendations on anybody. That is one of the reasons it finally passed out of existence. The combined functions created so much animosity among the members of that board and greatly confused so the interpretation of existing agreements with what an agreement ought to contain, that it destroyed the effectiveness of the board completely.

You will appreciate that this function of deciding disputes arising out of the interpretation and application of an agreement is an entirely different function from the one of deciding disputes which arise because a union says it wants a particular thing and the employer says, "We won't give it to you." This function of deciding disputes that involve the interpretation of agreements is really a quasi-judicial function. It is the same kind of thing that any court is called upon to do if you or I bring a suit under any kind of contract against somebody else and the case involves an interpretation of that contract.

The combination of these functions in one board was a very unhappy one. That, among some other things, led to the passage, in 1926, of the Railway Labor Act. It established, again, a Board of Mediation and Conciliation in the government. It added to the functions of the Mediation Board one further one, which has been carried over into the present law. That was, in the event the board was unable to settle disputes between parties, it was required to report that fact to the President of the United States. He could, in turn, appoint a fact-finding board which would investigate the dispute and report back to him.

The 1926 act did not provide any machinery, except these boards set up by agreement, for deciding these interpretation disputes. The employees were dissatisfied with that situation. They wanted a national board to decide these disputes. They wanted it for two reasons: First, because they wanted a uniform interpretation of the provisions of the agreements of the railroads, which are similar, and they wanted the same interpretation all over the country. And, second, they wanted a national board made up as they wanted it made up, of members of labor unions and representatives of management, which meant that almost anybody who attempted to get anything from that board, or have a case decided by that board, had to belong to a labor union before he could come before the board.

The 1934 amendments to the Railway Labor Act accomplished those things. That is the present Railway Labor Act. Although it was technically an amendment to the 1926 Act, it made such sweeping changes

that, for all practical purposes, we can consider the present Railway Labor Act as having been passed in 1934.

That act spelled out specifically the obligation of carriers and their employees to engage in collective bargaining and to settle disputes between themselves, if possible, in conference. And, further, it guaranteed the employees the right of free choice of a bargaining representative and prohibited the carrier from interferring in any way, very much like the National Labor Relations Act does. It prohibited the closed shop and the check-off of union dues. That is very significant. This act has been in effect since 1934. There are no closed-shop agreements on the railroads. They are prohibited by the law and criminal penalties are attached for violation of that provision. In other words, if a railroad enters into a closed-shop agreement with a union, it is subject to the criminal penalties provided in the Act--and they are pretty heavy, too.

It also prohibits the check-off of union dues. That is interesting because of this great controversy going on about the closed-shop and its value. The fact of the matter is that the railroad unions are certainly among the strongest in the United States and they are certainly the wealthiest. I seem to remember, for instance, that after the national strike last year the president of one of them said he had some fabulous sum of money he could use to defeat President Truman for reelection. I think it went into the hundreds and hundreds of thousands of dollars. So they seem to have done all right for themselves without the necessity for a closed-shop.

The act also created a new Board of Mediation, which was given the traditional function of mediation and conciliation in settling disputes. But it has no authority to impose its views on anybody. It simply acts as an intermediary between the parties. In actual practice, what happens is the board will appoint a mediator. He will come and meet separately with the employees; then he will meet separately with management. Like all good mediators do, he tells the employees they haven't got a chance of getting what they want. He tells management they haven't got a chance of not giving it to them.

Then if the Mediation Board cannot bring the parties together, it suggests arbitration. Either party may refuse to arbitrate. In this event if there is a strike threatened the Board reports that to the President of the United States and he can then appoint an emergency fact-finding board to investigate that dispute.

The 1934 Act added another function to that of the Mediation Board and that was deciding representation disputes between the unions. We are not troubled with jurisdictional disputes very much on the railroads because under the provisions of the Act, if

Union A contends that it represents this particular class of employees and Union B says, "We represent them," the Mediation Board steps in. It can step in on its own motion or the parties can invoke its services, but it gets in there and it gets in very rapidly. It determines that representation dispute. It either holds an election, if it thinks an election is necessary; or it can use any means that it wants to find out which of the unions really represent the employees.

I do not know of any jurisdictional strikes that we have had on the railroads. These jurisdictional strikes have been no trouble to us. I think that provision in the act is one that might be given very serious consideration for adoption in industry.

In that connection, it is true that under this act if a union represents a majority of any particular class, it automatically represents them all. It can make an agreement that covers every member of that class, whether they belong to the union, whether they like the particular provisions of the agreement, or not.

From 1934 up until 1945, which was the last year for which reports are available, the Mediation Board's services were invoked in 3,528 cases, as an indication of how much work it has. About forty-two per cent of those involved these representation disputes between unions and the balance of them involved disputes between employees and carriers growing out of demands for wage increase and changes in working conditions.

That act also established the National Railroad Adjustment Board. That board is set up with power--and I mean power--to decide disputes which arise out of the interpretation or application of agreements. It has no power to deal in any way with these bargaining disputes. It is composed of thirty-six members; eighteen appointed by the carriers and eighteen appointed by the labor organizations national in scope.

The Act does not say who the members of the board are going to be. The carriers, through their various associations, get together and name their eighteen members and the railroad labor organizations do the same thing. This means that at the present time organizations like the United Mine Workers, which is attempting to move into the field of railroad labor representation, have no members on this board.

That board is divided into four divisions. The jurisdiction of each of the four divisions is divided by classes or crafts of employees, and not by the subject matter of the dispute. For instance, the first division, which is made up of ten members, and by far handles the greater bulk of all the work before the board, has jurisdiction over those disputes arising between carriers and what we call engine

and train service employees; in other words, engineers, firemen, conductors, trainmen, yardmen-people who run the trains.

The Second Division has ten members. It has jurisdiction over the shopcraft employees--machinists, boilermakers and mechanics in the shops.

The Third Division has jurisdiction over the telegraph and signal employees, clerks, and dining-car employees.

The Fourth Division has everything the other three do not have, which means it has very little to do. Division Four is not very active.

Each one of these divisions functions separately. They all sit at Chicago. The way in which this board functions, its procedure--or lack of it--the difficulties it has encountered, some of the decisions it has made, and the work it has accomplished would fill a good-sized library. Of course we will have the time to discuss it here in only very small detail. That is unfortunate, in one sense, because this is not only one of the most unique quasi-judicial agencies in existence, and one of the most interesting, but it is also one about which the most varied opinions are held.

Up to the middle of 1945, from 1934, there had been 21,097 cases docketed with the First Division of this board alone. In that year there were 3,256 cases before this one division. During the year the board decided 1,221 cases. Mathematically, that indicates it is getting farther back with its work all the time. The other divisions handle a small number of cases, compared to that. For instance, the Second Division in 1945 decided 72 cases; and the Third Division, 333.

The bulk of all the work is before the First Division. The great number of disputes (some 21,000 of them) before this one division of the board may be startling to you, but it should be kept in mind there are almost nine hundred railroads in the United States who have a million and a half employees; that there are in existence on these railroads 4,665 basic labor agreements, and by "basic" I mean agreements which govern their wages and their working conditions in great detail! There are thousands of supplemental agreements of one kind or another. There are thirty such agreements on the Pennsylvania Railroad alone. I have one of them here; it is 318 printed pages long. There are 4,665 of those things in the United States governing the wages and the working conditions of the railroad employees. So, you see, there are a lot of disputes that can arise.

It must also be kept in mind that the working rules on the railroad are tremendously complicated and that strict craft and class lines are drawn by the employees.

Then, too, it must also be kept in mind that until fairly recently these agreements were drawn up by laymen who were not

particularly skilled in drawing them up and who, unfortunately, many times retained provisions within the confines of their own heads that should have been put in the agreements.

On top of this add the fact that the railroad business has a language all of its own and which to the uninitiated is almost meaningless. As an example of that special language that the railroad people use, I recall an incident that happened several years ago, where there had been a rear-end collision. The engineer of the following train was called in for investigation and was asked, "What did you do when you say this train ahead of you?" He said, "I goosed her into the big hole, kicked over the Johnson bar and joined the birds." When a lawyer who was present asked him to translate that, he said, with great pity and condescension on his face, "Oh, that's simple. I applied the emergency brake, reversed the locomotive, and bailed out."

Another example of that type of language was quoted by Dean Garrison of the University of Winconsin Law School, from a bulletin issued by a superintendent on a western railroad, which read this way: "Effective date all yardmen in cannon-ball service bringing drags in yard from outside points will cut and bleed own cars." To a railroad man that means trainmen bringing cars in through-freight service into the yard will uncouple their cars and bleed the air out of the brake cylinders in the car. It is very simple, but it is a little bit like this jive talk these youngsters use today, which is unintelligible to anyone except them.

The labor agreements don't go quite that far in employing railroad terminology, but they go pretty far in that respect and use terms that have a special meaning. Because of the technical nature of these working rules, and because of all the complications and because of this special language, the Railway Labor Act provided that the members of this Adjustment Board, who were going to determine what these contracts mean, ought to be people with special knowledge in the field. So that is why it provided that half of them would be appointed by the railroads and half by the labor organizations, so they would have some knowledge which outsiders would not possess.

The trouble with that theory is that there is an equal number of railroad representatives and an equal number of labor representatives on each division of this board. As you can well imagine, they are gentlemen of pretty strong opinions, on both sides. In many, many cases all the railroad members take one point of view and all the labor members take another point of view and you get a deadlock. In that case, the Act provides that a neutral referee shall be called in to sit with the board and break that deadlock. If the members of the board themselves cannot agree on a referee, then the Mediation Board appoints one from a panel which it keeps on file. The members of the board never can agree on one, so the Mediation Board appoints them all. In most instances, those referees are judges of state

courts, usually from the western part of the country, and sometimes they are lawyers and occasionally a college professor is used.

At this point this whole theory of expert members on the board breaks down because the referee is a complete layman in that respect and yet he is the person who ultimately decides this dispute. The fact that they rotate these referees--they have a great, long list of them and in order to avoid any charges of favoritism of one kind or another, they use a first-in and first-out principle on this list. They take a man when he goes to the top and take him when he comes up again. The result is, none of them ever becomes expert in the field. He has no opportunity to do so. That is one of the defects of this system. There ought to be, many people think, neutral members permanently appointed on this board so that, after a time, they would possess some knowledge in this field and be as well qualified as the management and labor members.

This Act provides a somewhat peculiar method of judicial review of the decisions of this board. It provides that after an award is made in favor of an employee, if the railroad does not comply with that award the employee can go into an appropriate district court and get an enforcement order. That enforcement order from the court has the same effect as a judgment against the railroad.

The trouble with that is that there is no provision whereby the carrier can get into court and there is no provision whereby a losing employee can get into court. In other words, the winner can go into court to obtain enforcement, but the loser never can. That is a very sore point with the railroads because this is what happens: Suppose the case is decided by the Adjustment Board in favor of the employee. The carrier thinks the decision is wrong and refuses to apply it. Under the Act, presumably the employee will go into court to get an enforcement order and at that time, the carrier will have a chance to try the case all over again, except the findings of the board constitute prima facie evidence. That is the act requires the railroad to assume the burden of proof in the case. But the employees don't do that. The unions, except in a very few cases--you can count them on the fingers of your hand--have never taken these cases into court. They refuse to do it. What they do, instead, is to say, "Pay the award or we're going to strike." Consequently, it very effectively prevents any judicial review of the decisions of this board.

The carriers feel that they certainly ought to have the right of judicial review in large and important cases. Some of them involve hundreds of thousands of dollars, before this board. Any losing party ought to have the right of judicial review because these are legal questions this board is determining, It is determining what a contract means; it is the same kind of function

that a court exercises, as I said a moment or two ago, with respect to other types of contracts.

Furthermore, the Supreme Court of the United States, in a case in which I was one of the railroad lawyers, unfortunately, held that the carriers cannot even go into court before the board has made its decision, if the employees have started their case before the board. So we are out. Of course the unions oppose very strongly any change in that and charge the carriers with attempting to use their "great resources" to drag these things through the courts, knowing the employees do not have the money to litigate these matters. We have offered to pay all expenses of litigation, but that does not lesson their opposition.

I said a moment ago that the procedure before this board was peculiar, which is putting it rather mildly. Here is the way it works. A group of employees who feel they have a claim against a railroad, under one of these contracts, notify this board that within thirty days they are going to file a submission with the board. Then the board notifies the carrier that within the same thirty-day period it has to prepare its answer. Of course that means you file your answer without having seen the submission which the employees file. The notice which the employees file with the board contains only a very brief and summary reference to this claim they have. But it is not quite as bad as it seems on its face because before they can go to the board they must have made an attempt to adjust this dispute with the management. But the difficulty is that many times the basis on which they go to the board is entirely different from the basis on which they discussed it with management. Sometimes it takes the parties considerable time to get together on the issues.

These submissions are the most peculiar documents you ever saw in your life. They contain allegations of fact, arguments, authorities, conclusions, and anything under the sun that the parties can think of either to support their claim or their defense. They are all in writing, of course. Some of the divisions of the board permit the parties to file rebuttals after the submissions have been filled but the First Division does not.

Then the case is set down for a hearing before the proper division of the board; but it is a hearing in name only. The parties are not permitted to introduce testimony or call witnesses. No stenographic record is made of the hearing. In fact, it is simply an argument before the board by the representatives of the two parties, based on these submissions which they have filed. So there is never any proof of facts. The whole case is tried on allegations. The parties are pretty honest in stating the facts.

in these submissions, but still nobody is ever required to prove them. You state them and that's it!

After the hearings before the board, if the case is deadlocked, as I said a few moments ago many of them are, a referee is called in. The Second, Third, and Fourth Divisions permit the parties to come before the referee and argue the case over again. The First Division does not. You never get a chance to see a referee in the First Division. That is another example, of course, of the need for permanent referees on a board of that kind, because here in all three of these divisions you have the right to appear before them. That means you have to make two appearances, whereas, if they had permanent, neutral members on the board, you would have to appear only once. That is the kind of record upon which the decisions of the board are made and, as I said a moment ago, many of them involve thousands and thousands of dollars.

The decisions of the board are printed, but as far as the First Division is concerned, they are not very helpful in determining the basis of the decision.

Of course it is pretty difficult to tell on what basis the board made its decision so that when you get a similar case, or one that may come close it it, you have nothing in the world to go on. They do, however, print the employees' and managements' statements of facts in these reports.

The other three divisions of the board go a little bit further in stating the basis of their findings. In some of them, the referees write fairly brief but rather revealing reasons for their decision.

The lack of any requirement, that I mentioned a moment ago, that facts must be proved, leads to some rather peculiar results sometimes. Here is a decision recently made by the First Division which says this: "The Division holds that if the facts as stated by the petitioner are correct, the claim is valid; otherwise, not." Of course, that is not a decision at all; the parties are right back where they started from.

I do not mean to give the impression that that happens in a great many cases, or that the work of the board is futile or useless. It disposes of hundreds and hundreds of cases and in many, many of them there is no substantial dispute as to the facts and all that is necessary is an application of the contract to those facts. The facts are not disputed in many cases, but certainly where there is a dispute in connection with the facts there ought to be some means for the parties to prove those facts so that the Board would not find itself in this kind of a dilemma.

The railroads, I might say, have tried many, many times to get some of the procedural defects in this board corrected, but the board sets its own procedure and, as I said, there are the same number of management representatives as there are labor and we can never get a majority vote to change any of the rules of procedure. So the status quo is preserved.

It is impossible to discuss here in any great detail the types of cases that come before the board, but they cover a great variety of subjects. They all arise out of the interpretation of these agreements. Many of them are discipline cases, where a man who has been discharged contends he was improperly fired and goes there to get reinstated and collect his back pay for the time he has been out of work.

Some of them are claims for compensation based upon an assertion that one group of employees did work which belonged to some other group. As I have pointed out previously, there are very strong craft lines in the railroad business.

Some of them are claims for compensation because one man was called from an "extra" list to take a train out when someone else was ahead of him on the list and should have been called.

Some of them are claims, for instance by road trainmen who ran trains over the road, for another day's pay at the yard rate of pay because they were compelled to do some work in the yard after they brought their train in.

That ushers in the subject of featherbedding, which is a tremendously interesting one and one about which there is very little agreement between the railroads and the unions. It is a subject that, as I say, is not only interesting but it may contain some lessons which industry could well keep in mind--some sort of warning signs, let us say. Maybe we will have time to talk about it a little later; if we do, we will.

As I said, many of these cases involve great sums of money. That is not always apparent from the award because the claim may be brought on behalf of one individual, as it was in this case; yet, there may be dozens or hundreds of other people who did the same kind of work he did, or who were in the same situation he was. So that an award in this case means you have got to pay all the rest of them. That runs into great sums of money.

In 1939, the Attorney General of the United States called to the attention of the President the need for procedural reform in all government administrative agencies. The President ordered an investigation. The results of that investigation with respect to the National Railroad Adjustment Board have been printed by the

railroads in a volume which I have. With the Commandant's permission, I would like to supply the College with some copies of this document because it contains some very interesting information about this board, the way it works and its usefulness as a medium of settling disputes.

That brings us to the second major type of dispute--the most troublesome of the two--the so-called bargaining dispute. There is an obvious need for some machinery for disposing of those disputes. As I said, the union's demands may be reasonable and the carrier's refusal to comply with them may be unjustified; or, on the other hand, the union's demands may be wholly unreasonable, as in a case in which I appeared last Fall, where the union demanded a seventy-three per cent increase in pay and two hundred and twenty changes in the working rules, which would have more than doubled the cost of operation of the railroad. Certainly, in a situation of that kind, there must be some machinery or some means for determining which of the two is right: Is the employer justified in refusing to grant this, or is the union justified in making those demands?

The Railway Labor Act has provided machinery for settling those disputes but, in my opinion, it is not entirely adequate. That is this Emergency Fact-Finding Board I referred to a little while ago, appointed by the President. That usually consists of three members. They investigate the dispute and within thirty days make a report to the President of the United States, containing recommendations for a disposition of the dispute. There is no compulsion attached to the board's reports except the personal compulsion which may be exercised by the President and by public opinion.

Those boards hold public hearings and usually the parties present evidence, testimony, witnesses and exhibits in great detail to establish the facts upon which they rely. No formal rules of evidence are applied. The parties are left pretty much to their own devices as to how to handle their case. A stenographic record is made of the proceedings. Their witnesses are not sworn, but in every case I know of; except one, they have been subjected to cross-examination to test the truth of what they say. That one exception was the same case I referred to only a minute ago, where the United Mine Workers, representing the employees, asked for a seventy-three per cent increase in pay. That union had set a strike date; the Emergency Board had been appointed by the President. On the day the hearing opened, counsel for the Mine Workers presented this great document containing two hundred twenty proposals for changes in the working rules and pay increases. He handed it to the board and said, "Now I suggest the board take a couple of hours to read this thing and come back and we will be glad to answer any questions you may have. We won't answer any questions from the carrier, but we will answer them from the board." They did not propose to offer any facts to support those demands. They would

answer questions and that was all.

Of course, we stressed very strongly the traditional burden which anybody, making demands of another, has to justify those demands. But the board said they were not going to tell the parties how to conduct their case. So we were faced with the rather unhappy alternative of either packing up our bags and going home and saying, "Well, they haven't justified these things so there is no reason why we should defend them"; or the other alternative of going ahead and putting in a defense without any case having been made against us.

A strike was pending; the public was threatened with interruption of service, and we did not feel we could be too technical about the whole thing. So we put our case in . Then after we were through the union put one witness on the stand and refused to let me cross-examine him, which was, as a matter of fact, helpful because he probably would have known the answers to the questions I might have asked him. Eventually this board ruled against these changes and the strike was finally called off.

Such refusal as that, to abide by commonsense procedure, is very rare. It is the only time I ever knew of it. It is a matter which can be controlled by the board because the board can, and certainly should, force the parties to adopt a sensible procedure.

I do not know of any instance in which a railroad has refused to abide by the recommendations of one of these Emergency Fact-Finding Boards. To be perfectly frank, it is probably because they do not feel that they can subject the traveling public to a strike, in the face of the recommendations of a board which has been appointed by the President of the United States.

Of course that is exactly what this board was designed to do and that is exactly the compulsion it was intended to exercise, but unfortunately that same compulsion does not work in quite the same manner as far as the unions are concerned. There have been a number of instances where unions have refused to accept the recommendations of these boards. One of the most noteworthy is the refusal of two unions, last year, which resulted in a nationwide railroad strike. There had been an award by an Emergency Board in that situation, as you probably know, recommending a wage increase of sixteen cents an hour and some six or seven changes in working rules. The organization refused to accept that. The President got the parties down to Washington. They were in and out for a number of days. The strike was called off once. The President suggested that the railroads pay, not sixteen cents an how , but eighteen and a half cents and forget about these recommendations for changes in working rules that the Board had made. The railroads said they would do it. The unions still refused and ultimately went out on strike, which lasted for a few days, as you remember. Then some additional compulsion was

exercised by the President in his message to the Congress and in his proposed bill. The strike ended very rapidly.

But I think it is unfortunate. It seems to me, if we are going to employ compulsion, why not have a straight-forward kind of compulsion and make this procedure for handling these disputes as compulsory as we have made the procedure for handling grievance cases.

There are a number of defects in this system. First of all, these boards almost always try to act as a mediator. In other words, before they make their recommendations, they try to get the parties together and make a settlement. Since there is a strike impending, that mediation effort takes the form of trying to force the carrier to grant further concessions in order to prevent a strike.

That mediatory process is often carried further in the board's reports because, as a matter of fact, they do not find any facts in these reports. The board, in its report, very seldom makes any findings of fact. What they actually do is make recommendations without regard to the facts. In many cases they make the recommendations which they feel necessary to settle that impending strike. In other words, it means going considerably farther along than the facts justify, such as requiring two and a half cents, for instance, over what the board had awarded as a wage increase last year. So that, after all, they are really not acting as a fact-finding board but as an extension of this process of mediation and conciliation, which is presumably over and done with before you get to a fact-finding board.

There is no compulsion, as I said, attached to their recommendations, except the President's personal compulsion and public opinion. Of course, when the President gets into one of these things that puts him in the role of the final arbiter of the dispute. He has to, of necessity, base his decision on a great many factors other than the actual facts in the dispute. So, many railroads feel that the law ought to be changed to require these boards to make specific findings of fact, based on the record and based on the facts as presented to them; to make their recommendations on the basis of the facts, because when you get to that point both of the parties, and particularly the public, want to know what the facts are, who is right and who is wrong about these disputes. That is what that board is for, to find out what the facts are. There are some railroads that feel the present system is adequate and that public opinion and the President, or someone else, will exert enough compulsion to settle these things; but it has not always worked out that way in the past.

I think we can say that the history of this railway labor legislation, the present Railway Labor Act, and the experience

under it has shown two things, at least: First, with regard to disputes involving the interpretation or application of an agreement, we have, in effect, compulsory arbitration in the railroad industry. It isn't called by that name and many people throw up their hands in horror when you say "compulsory arbitration". This National Railroad Adjustment Board that decides these disputes has as much power as a Board of Arbitration. Its decision is final and only in the one instance I explained can you ever get into the courts. So, for all practical purposes, that is compulsory arbitration.

The second thing that this experience indicates is that Congress has gone as far as it can possibly go with noncompulsory machinery for settling bargaining disputes. Anything that can be accomplished by prestige and public support, or public opinion, certainly should be accomplished by those fact-finding boards appointed by the President of the United States.

The conclusion is, therefore, pretty plain that the only remaining step which Congress can take to guarantee more satisfactory and definite solutions in those bargaining disputes is some form of compulsion, whether it is compulsory arbitration, or whether it is labor courts, or whatever it is. Anyway, some form of compulsion is all that is left if Congress is going to take any further steps. I said many people dislike horribly the idea of compulsory arbitration. There is going to be a lot of strong opposition to it for many years to come. However, there is considerable doubt as to whether anything short of compulsion will do the trick. We have tried everything else.

Gentlemen, I understand I am to stay up here and be subjected to whatever questions you may have. I hope I am going to enjoy this more than I have the past--can it be I've talked that long? (Laughter and applause)

LIEUT. COLONEL GODARD:

I will fire the first question and that is to ask you to tell us the absolutely unbelievable story of the yardmaster who waved his hand to the freight trainman.

MR. KNIGHT:

You are introducing now, Colonel Godard, the subject of featherbedding. If we are going to talk about featherbedding, let us take down our hair, take off our coats and get in there and slug this thing out for a while. The instance you are referring to was a claim I know was filed against a railroad. It is a pretty good instance of one of the worst kinds of featherbedding.

The yardmaster in this particular yard was a good yardmaster. He was out on the ground supervising the operation of the yard.

A freight train came in to the entrance of the yard and stopped on a curve. The yardmaster was standing there. The crew stopped to throw a switch in back of the train so that it could move back, onto another track. Because of the curve, the engineer could not see the rear brakeman's or conductor's signal. The yardmaster stationed himself half-way down the track and relayed the signal; in other words, he said, "come on back!"

Well, that railroad got a claim for 34 half days' pay, as a result of that hand-signal the yardmaster gave, by thirty-four yardmen who were on the yard "extra" list. You know, our overflow work is handled by what we call "extra lists" on the railroads. You have regular assignments that run every day, on regular trains; then you have an extra list that handles extra sections of trains, unscheduled freights, and that sort of thing.

Thirty-four men on the yard brakeman's extra list claimed a half-day's pay because that yardmaster had given a hand-signal, on the theory--and it's a theory that works, too--that he was taking a yard brakeman's job and that if he had not given the signal, this extra brakeman would have been used; if this man would have been used, this the next one on the list would have been used on the next job, and so on down the list for thirty-four men. Maybe all of them worked that day and earned a day's pay; that doesn't make any difference.

Claims of that kind are sustained too many times. It is common, for instance, to have a claim where a road crew will start out of Yard A with a freight train. You see, you don't pick these things up and drop them down on the main tracks. They have to be made up. You go through that yard and out on the road. through another yard, to the end of the run. There is such a rigid line drawn between the men working in the yard and the men working on the road that if you have that road crew do anything more than--on the Pennsylvania, at any rate--pick up those cars from the minimum number of tracks, at a point where yard crews are employed the road crew will hold out for extra pay. If there are fifty cars to go into a train and there is an available track with a fifty-car capacity, if they pick those cars up from three tracks where they happened to be, you give a extra day's pay to that crew. And if you make them put them away at the end of the trip on more than the mimimum number of available tracks, that will hold the cars they will claim another day's pay.

I know of another claim which was later withdrawn by the organization. This was their claim: Down on the, as I remember, Monongahela Railroad out of Pittsburgh there was this local freight train. You know local freights; that is the job that sets off a car at this industry, picks up a car here, goes down the road and picks up another car. They get the highest rate of pay of any

engine or train service employees on the railroad. Well, this crew had a 28-mile run between these two points. The railroad made them assemble the train in the initial yard, that is, pick up the cars from the various tracks, put them together, and put the engine on. They went out about five miles, stopped, set some cars off. They spotted a car--what we call "station spotting". You know what it is. They put that car at a loading platform, spotted it, and went on down the road, jogged along a few more miles. They did similar work three or four times. When they finally got to the end, they put their train away on four or five tracks. Well, they claimed a day's pay, at the yard trainman's rate, for making their train up. Then they said, "We ceased to be yard trainmen. We became road trainmen. So we want a road day's pay. When we went down here, we had to spot cars. That's yardmen's work. So we were converted back into a yard crew. We want a yard day's pay for it." That means they cooked up about twelve days' pay for that 28-mile run, going from one yard to another.

Fortunately, they withdrew that claim. But there are many instances of featherbedding of that kind. They insisted we had no business using roadmen to make up the trains; we have yardmen to do that. They have separate seniority rights. They say, "If we let you use roadmen to make up trains, you will discharge every yardman you have and those men will be out on the streets."

The penalty is unrealistic and unrelated to the offense, if it is an offense. If you do one of these things, certainly a penalty of anything like 12 days' pay or 34 half-days' pay, because a man gave a hand-signal, is a completely unrealistic penalty; yet it is really the kind of penalty you get.

That is featherbedding. Colonel, we could talk about that for a long, long time.

A STUDENT OFFICER:

Can you tell us what the chances are for correcting this abuse? Are there any?

MR. KNIGHT:

You mean with regard to featherbedding, Colonel?

A STUDENT OFFICER:

Yes.

MR. KNIGHT:

Apparently the only way is by negotiation with the unions which, of course, has been very, very unsatisfactory, so far.

We make a few agreements, now and then, but you don't do it without making some other kind of concession. I do not know of any legal means by which we can get rid of them. These unions are always going to the state legislatures, trying to get full-crew bills passed. You are faced with that condition constantly. Of course, fortunately, there haven't been many of those laws. Indiana, Ohio, and Pennsylvania had some. I do know some of them limited the length of the trains.

I don't know the answer to that one, quite frankly, except to hope that some day you can work some of those things out with the employees. I, frankly, do not know any other way to get around it.

A STUDENT OFFICER:

What is the length of the day's work for your train crews?

MR. KNIGHT:

Railroad men, in road service, are paid primarily on a mileage basis. They get so much for each mile they run. Let's take an engineer, as an example, in passenger service. He has a basic day of 100 miles in five hours. In other words, if he only works an hour, he gets a day's pay. That is the minimum. He gets pay equivalent to 100 miles, no matter how little he does. We have to pay him at least that amount. If he runs 150 miles, he gets paid for the 150 miles. He gets so much per mile, you see. That 150 miles, for instance, is the equivalent of a basic day and a half-day's pay.

You ask how long their day is. There is one run, from New York to Washington, for instance. The engineer on that run makes a round-trip a day. It is a pretty fast train. I think, as I remember, he is actually on duty a total of something like seven hours and forty-five minutes, but he receives four and a half days' pay for that. He only works ten days a month. He has twenty days off a month because the unions have a mileage limitation in order to spread this out so that one man doesn't get to be a millionaire over night and the other fellow doesn't get anything. They say, "You can run 4500 miles a month and then you quit." If he runs his 4500 miles out in ten days, he is all done for that month.

I do not remember exactly what his compensation was, but he makes around thirty-eight or forty dollars a day for those ten days.

A STUDENT OFFICER:

You say there are no closed shops in the railroad industry.

MR. KNIGHT:

That's right.

A STUDENT OFFICER:

Well we had a speaker here who said you cannot legislate an open shop. That is, the unions will maintain a closed shop--my understanding of his statement--by one means or another. Now can you tell me how many of the eligible workers are in the railroad unions and if it is 100 per cent how do they do it?

MR. KNIGHT:

It isn't 100 per cnet by any means. It may be pretty close to 100 per cent in the train service organization. You know the engineers and firemen and conductors and trainmen have been organized for a long, long time. They have had some agreements with the railroads since the beginning of the century--I think our first one was in 1900 or 1903. I expect that practically all of the engineers, firemen, conductors and trainmen belong to one or the other of those four Brotherhoods. But it certainly is not true that the clerks, for instance, have 100 per cent membership. They have to have a majority, apparently, in order to get the right of representation. But many of the other unions--maintenance-of-way people, track laborers, and those kinds of people--don't have anything like 100 per cent membership in their unions.

The railroad unions have not been disturbed about this closed-shop thing, or felt it necessary at all. They have never made any attempt to have the law changed; in fact, they had this provision put into the law. I might say that that is not a tribute, too much, to them. They had it put in because they were trying to get rid of the company unions. They put in the provision because they were afraid the railroads were going to maintain company unions and make the people join the company union. So they put in a provision preventing the closed shop. That prevented the closed shop with a company union, but it also very effectively prevented the closed shop with any other union. They never have attempted to have that changed.

They are very wealthy unions, as most everybody knows, and apparently have no difficulty in collecting their dues or getting sufficient members to maintain their unions.

LIEUTENANT COLONEL GODARD:

I forgot to make one statement in my introductory remarks this morning. During the war, Mr. Knight was with the Navy and held great rank. He was a Lieutenant (j.g.). I think that is right, isn't it, Guy?

MR. KNIGHT:

That's right; for eighteen months.

LIEUT. COLONEL GODARD:

I think, very definitely, in addressing an audience like this I should have told you that. I apologize.

A STUDENT OFFICER:

I would like to ask if the unions relaxed any of these featherbedding practices during the war.

MR. KNIGHT:

They relaxed, to some extent, this mileage limitation provision, for instance, Colonel. But I can't say there was any great relaxation of these other types of things we have talked about. No, I don't think there was any substantial amount of relaxation of featherbedding rules at all. During the war, of course, they did not insist upon passing train-limit and full-crew bills because of the manpower shortage. I think we must give them credit for that.

A STUDENT OFFICER:

Did the War Manpower Commission make surveys and manning tables for the railroads?

MR. KNIGHT:

Yes, it did.

A STUDENT OFFICER:

I wonder, did they recommend any big cuts as a result of those surveys?

MR. KNIGHT:

No. The railroads, of course, were having great difficulty getting enough men during the war and were running short-handed all the time. They did recruit a great number of workers, but they were unskilled. I don't think there was ever any recommendation for substantial reductions in railroad personnel.

LIEUT. COLONEL GODARD:

Thank you very much, Mr. Knight. I certainly want to say, on behalf of the Commandant, we really enjoyed this lecture. Thank you very much.

(Applause)

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