THE RELATION OF THE AMERICAN GOVERNMENT TO RAILROADS IN RECENT TIMES.

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PREFACE

One of the major problems facing the United States Government at the present time is that of the coordination and consolidation of the various types of transportation facilities throughout the country. The largest single factor of transportation is that of the railroads. That railroads and the Government are mutually interdependent goes without saying. In order to have a healthy nation, it is necessary that the nation have healthy arteries of commerce and communication.

This work is not intended to forward any type of solution to the problem, but to emphasize the need for coordination and cooperation on the part of all types of carriers and that cooperation and coordination can best be carried out under a system of private ownership supervised by strict government control.

It is the intention of the author to chart the course of the governmental relations to railroads in recent times. Railroads were selected to show the causal relationship between the government and transportation because it is felt that railroads are still the largest factor in transportation, and will continue to be indefinitely. As such, the rail-carriers typify the transportation system.

In the growth of governmental regulation of the railroads may be traced the development of a closer relationship between railroads and government from the slipshod control of a few decades ago to the more organized program of today. From the trend, it is apparent that this relationship will become more refined as time draws on.

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CHAPTER I.

EARLY GOVERNMENT REGULATION

One impressive fact looms large in the history of all people. Practically all of the time of the primitive person is taken up with the production of the barest necessities of life. The human race begins to make progress only when there is a material surplus available. Man gives no thought to anything like cultural or intellectual matters when his struggle for existence is so keen that the very basic necessities of life alone are available. If the aesthetic and mental interests of life are to be stimulated, it is necessary that there be some surplus of goods.

Transportation aids this prerequisite of civilization in two ways: first, by making goods available over a wider geographical area; and second, by increasing the output of goods.[1] Thus, there is a very high correlation between the stage of development of a race and the degree of development of that particular people's mode and ease of transportation.

Not only do the development of the aesthetic and mental interests of life depend upon transportation, but the very state and solidarity of a nation itself may be measured in terms of this self same transport. The modes of transport have changed, are changing, and will continue to change. The greatest factor of transportation up to, and including the present time, and for some time in the future, is the railroads. The dependable elimination of time and distance, the

quick interchange of thought and information and the national unity resultant, makes the railroads the most vital and constantly impelling mechanical and economical force in a nation.[2]

No better illustration of the solidarity of a nation and its utter dependance upon the railroad may be given than the comparison of China, with a 400,000,000 population and 7,000 miles of inefficient and poorly operated railroad; Russia, with a 140,000,000 population and 43,000 miles of fairly equipped and run railroad; and the United States, with 130,000,000 people and 261,000 miles of railroad (first main track) with excellent equipment and service.[3]

In 1867, H. V. Poor ended the first Poor's Manual with the statement;[4]

> The resume which we have given of the progress, condition and results of the railroads of the United States reflects, on the whole, great credit upon their management, and gives, at the same time, a reasonable expectation of still better results. More progress has been made, within a period of over little more than thirty years, in the science of locomotion, than had previously been made within the history of society. No physical achievment of the race will, in the magnitude and value of its results, bear a moment's comparison with the railway. The progress of the past is a sure guarantee of the future.

As the history of the development of a country is so closely bound with the development of the railroads, it is only natural that problems in management and operation are bound to arise. Although the railroads were "built with private gain, to serve the public at the public's urgent

request,"[5] it is necessary to realize that the railroads have passed from the realm of complete private control and ownership. It is necessary that one realize the railroads are, today, of and for the people. When any private enterprise assumes these characteristics, it is necessary, and only to be expected, that the people, in the form of their government attempt to regulate this enterprise to better serve their ends. The industry has then left the field of pure private enterprise and has entered that nebulous region, bordering on the public enterprise, known as a public utility.

When enterprise was small, and investments of capital were such that a monopoly was of little help to any going concern, competition was such that it regulated the cost to the consumer so that he was not obliged to pay much more for a given item than the cost of production. People remained interested in business because the profit was just enough to afford passable livelihood. Under such conditions, the English Economist, Adam Smith, published that great book, The Wealth of Nations, in which he attacked a governmental policy of the regulation of business, and argued that a better quality of merchandise might be had at a lower price if business men were left alone to be regulated by competition amongst themselves.[6] His thought was immediately taken up, and within fifty years, he came to be rather generally accepted in English speaking countries.

However, during the time that men were coming to believe the adage that "competition was the life of trade," the nature of business was undergoing some very drastic changes. These

changes came about as a result of the number of revolutionary inventions. As a result of these inventions, manufacturing ceased to be a handicraft process and became a machine process. As it was seen that capital was of vast importance in business, huge investments of capital began to grow up. This capital altered the method of production. Production now became a roundabout process, complicated instead of simple. The productivity of labor was heightened and goods now came to be made in anticipation of a market rather than on order. Great specialization resulted, and this in turn gave rise to what is known as a world market.

As the amounts in capital necessary for the carrying on of a business began to rise, it became apparent to many that it was impracticable to attempt a competing organization. Such enterprises, requiring large capital, came to be recognized as monopolistic in character. Where competition could not be carried on profitably, and where one organization served the needs of the consumer, it was learned that competition was foolhardy. Competition ceased, and with its decline came the growing belief that competition could no longer be held as a valid regulatory factor.

Eventually it was realized that railroads are monopolistic in character.[7] A railroad investment is very large. It cost many thousands of dollars for plant and equipment, and many more thousands for the purchase and construction of a permanent way. If one railroad will amply serve a given district, it is folly to attempt a competing line. Duplication of industry seems to have come mainly during the early part of the 19th century.

Railroads were in their beginning during the period of severe industrial competition. Many lines were constructed with the idea of competition in the minds of the builders. This made for a vast amount of duplication of service. Luckily, business was on a severe uptrend, and vast amounts of tonnage and many people availed themselves of the railroad service. However, there has been a slackening in the degree of industrial activity. Although more traffic may now pass over the rail lines, it is done much more cheaply and efficiently. The competing lines are still there, and railroads are beginning to feel the pinch of too much competition. Because the railroads were designed as a competing business, the railroad systems that have evolved now find that they compete severely with other means of transportation, and with themselves, as well. Thus, a system of government regulation has been caused to grow up for the protection of the railroads, as well as the public. As an example, rates are regulated to protect the public from exhorbitantly high rates, and to protect the railroads from ruin through excessive competition. More and more, rates have come to be correlated with service offered and with the elimination of competition, under close public scrutiny.

The creation of better and more workable relations with the public is one of the greatest problems facing the railroad managers today.

Railroad problems are not new questions. The railroad difficulty with the public and the public's difficulty with the railroads dates back at least sixty-five years. As has been pointed out, the nation's greatest industrial progress took

place about the middle of the last century. Desiring an outlet for the increased products which they were able to produce as a result of the machine technology, and spurred on by the demands of settlers in new sections of the country, railroad building grew tremendous. From 1867 to 1873, 32,000 miles of railroads were built. This exceeded the total mileage in the United States in 1859.[8] During this expansion, the laissez faire policy, as far as government regulation of business is concerned, was still generally believed. The absence of governmental restraint on the railroads in this expansion period made it extremely difficult for them to abide by regulation in a later period.

It is probably for this very reason that the increasing force of governmental control of the railroads has made the shortcomings of present day management so very apparent. Neither the government nor the railroads could be considered wholly honest during this expansion era. We have but to recall the Credit Mobilier incident on the part of the government. A further example of governmental corruption may be seen in which the par values of gratuities in promotion of legislation in 1858 are given:[9]

$175,000 to members of the Senate
355,000 to members of the Assembly
16,000 to the Clerks
50,000 to the Governor
247,000 to others.

Such books as A. B. Hicks EARLY HISTORY OF ERIE well exemplify the wrongdoings of the railroads and their managers.

The government began to be virtuous, and in doing so,

some rather oppressive measures were forced upon the railroads. Today, the railroads are, perhaps, the most closely regulated of our transportation mediums. This coupled with the hindsight of many railroad managers, pining for the "good old days", and their obstinacy toward any type of government regulation has caused an unhealthy state of friction between government and the railroads.

The history of railroad regulation in the United States dates back to a period just prior to the panic of 1873. As settlers moved into the West, the need for some easy means of transportation and communication began to become very apparent. Thus, the West sold its birthright, as it were, for more and more railroads. When the cost began to become apparent and the ills of absentee ownership began to be felt, occasioned by the demands for profit on the part of the Eastern Owners, the West realized that it had received fine railroads, but only at a tremendous cost. The men in charge of the railroads knew that they held their positions to make money for the Eastern Promoter and consequently, they did everything they possibly could to carry out that detail. The railroads of the West had been built too rapidly and the country could not support them; those immediately in charge of the railroad were under a heavy and unceasing pressure to make money, and they earned wherever and however they could, - where it was in their power to earn it by exaction, they exacted; where it was necessary to earn it by competition, they competed. There resulted a condition which might be described as intolerable.[10] At one point, there might

be several competing roads, and business would be fought over and freight and travel carried for almost nothing, while at other points, only a few miles distant, traffic would be made to pay all that it possibly could without driving it back on to the road. In many instances, goods carried for twenty miles might be charged more than goods going a distance of forty miles. We may believe Mr. Adams when he says:[11]

> Of course, even under the most favorable conditions such a state of affairs could not be perpetuated. In this case, however, it was aggravated by a system of gross jobbery which, before the storm burst, seemed to have fairly honeycombed the whole West. It began high up in the wretched machinery of the construction company, with all its thimble rig contrivances for transferring assets from the treasury of a corporation to the pockets of the ring. Thence it spread downward through the whole system of supplies and contract and rolling stock companies, until it might not unfairly be said that everything had its price. The whole story is told in these two words, Absentee Ownership; - while the western patron was plundered, the eastern proprietor was robbed. Under these circumstances the continuance of the system was made even shorter than it could have been by the other cause of grievance which has been referred to, - Bad Manners . . . . Taken as a class, the manners of the employees of the Western Railroads are probably the worst and most offensive to be found in the civilized world. It is difficult to realize why the official should regard the traveller or the person having dealings with the railroad as his natural enemy, but it is apparent that he does.

Public resentment against the railroads grew to gigantic bounds. It is only natural that this public resentment took the aspect of legislation. The explosion finally took place, and culminated in what came to be known as the Granger Laws. The enactment of laws was demanded which would regulate the profits,

the methods of operation, and the political relations of the railroads. The corporations were made to realize that the created was not greater than the creator, and that the railroads were not the masters of the people, but rather their servants. In this we find the complete abandonment of the whole theory of natural law under which the railroad systems had been created and had grown up. Governmental regulation of the railroads, then, dates from the Granger Laws, in spite of earlier commissions such as the commissions appointed by the states of Massachusetts and Ohio in 1867 and 1869. The prevention of accidents, the gathering of statistics, and the observance by railroads of the restrictions imposed by their charters were the chief objectives of these early commissions.[12]

The Granger Laws were a series of drastic state laws passed by different state legislatures to regulate the railroads. While the most strict of them were held unconstitutional or repealed, the courts did hold that the states had the right to regulate the rates that the carriers might charge, and to control the carriers in other particulars of state supervision as well.[13] There were many examples of unfair discrimination. The railroads were afforded a vast amount of unwanted publicity by the machinations of a few unscrupulous financiers. Spurred on by a continuation of the bad manners of the railroad people, there once again arose a demand by the public for further supervision of the railroads. State regulation of the railroads continued at a renewed pace, notwithstanding the announcement of the right of judicial review by the Supreme

Court. The Court stated:[14]

> The question of the reasonableness of the rate of charge for transportation by a railroad company involving as it does an element of reasonableness both as regard the company and the public, is eminently a question for judicial investigation requiring due process of law for its determination. If the company is deprived of the right of charging reasonable rates for the use of its property, and such deprivation takes place in the absence of judicial machinery, it is deprived of the lawful use of its property, and thus, in substance and effect, of the property itself, without due process of law and in violation of the constitution of the United States.

Since the larger proportion of freight moved in interstate travel, it was found that there was no way to regulate it except by Federal legislation. This fact became apparent in 1886 as a result handed down by the Supreme Court, in which it stated that state commissions had no authority to regulate the rates of freight moving in interstate traffic.[15]

Despite the large degree of public unrest and resentment, the railroads still persisted, heedlessly, in their practices of excessive competition and preferential rates. Agreements would be reached, but in the mad scramble for business just as rapidly be lost in renewed rate cutting. In order to circumvent this continued competition, the railroads engaged in the pooling of their traffic and plant and equipment. Pooling was naturally unpopular with the public and with shippers since it meant stabilized, higher, and sometimes unreasonably higher rates than were charged under the abnormal conditions of excessive competition.[16] The public had had enough. There was an inevitable reaction, culminating in the Act to Regulate

Interstate Commerce, passed by Congress in 1887, creating the Interstate Commerce Commission.

While the primary function of the Act seemed to lie in an attempt to prohibit rebating and other forms of unfair competition and forbade rates to exceed reasonable maxima, singularly or through the use of pooling, it is nevertheless true that the Act also was designed to encourage maximum competition amongst the railroads, this in the face of the recognized quasi-monopolistic characteristics of the railroads. The Commission was to prescribe and put into effect maximum reasonable rates, but the Supreme Court thought otherwise.[17]

As a result of the Supreme Court decisions, the Commission had little authority. Its powers were extremely uncertain, and it was seven years before it was able to establish its authority for the compelling of testimony from witnesses. Furthermore, having decided upon a case and having handed down a decision, it was not able to enforce its orders. In order to secure the obedience of a road, the Commission found it necessary to ask for the issuance of a court order. Since the court refused to accept the evidence of the Commission, the roads rather slighted the Commission by reserving their testimony for use in the Courts, if appeal might be found necessary. Then, in 1897, the Court held that the Commission did not have the right to make an order specifying maximum rates which a road might charge in the future.[18] Thus, the Commission assumed the characteristics of an absolutely useless body. Notwithstanding the practical nullification of the Interstate Commerce Act, it was indeed a strong marker on the road to

railroad legislation and draws its importance from that factor alone.

Following the decision of 1897, it at once became apparent that some revisions must be made in the Interstate Code if Congress was to keep control of the railroads. Furthermore, the anti-pooling provisions of the Act and the Sherman Anti-trust Act, had had the effect of bringing about the combination of several companies under the ownership or direction of one company.[19]

General public and Congressional uneasiness continued, following the Court decisions. Furthermore, the public attention was being drawn to other phases of the railroad question such as the combinations and inter-locking directorates of the railroad companies. This probably arose as a result of the application of the Sherman Act, passed in 1890, to the railroads. Originally assumed to have no connection with the railways, this law was soon construed to prohibit all agreements and combinations between competing carriers.[20] Application of this Act to the railroads was speeded by an investigation which bared the fact that E. H. Harriman controlled the Alton, the Union Pacific, the Southern Pacific, and the Kansas City Southern. Wherever freight was to be moved from the West Coast, the Harriman lines were to be reckoned with.[21] Practically all the lines east of the Mississippi had directorates which could be numbered among a list of twenty-nine persons. E. H. Harriman had boldly proclaimed that if it were not for the Sherman Act, he would also acquire the Sante Fe, the Northern Pacific and the Great Northern.[22]

Safety of the railroads began to draw the attention of the public eye. As early as 1893, Congress began to regulate the physical aspects of the railroads by passing the Safety Appliance Acts requiring the use of power brakes and automatic couplers.[23] In 1898, the Erdman Law was passed. The aim of that law was to prevent the blacklisting of employees, to outlaw the requirement of railroads upon their employees that the aforesaid employees release the road from any liability for injuries received during the course of employment, and, in general, to protect labor organizations.[24] In several of the lower courts these provisions had been declared unconstitutional as a denial of due process of law, as well as not regulatory of interstate commerce, and, therefore, not within the commerce power of Congress.[25] However, when the question came up before the United States Supreme Court, the act was adjudged to be constitutional.[26] Eventually, that act was strengthened and broadened and finally replaced by the Newlands Act, passed in 1913.[27]

Rates still continued to be the important question. In 1899, freight rates were advanced, giving rise to increased legislation. The railway officials argued that combinations were less likely to indulge in discrimination than were weaker competing lines. They also contended that increased freight rates were necessary to furnish a basis of credit, which was necessary to improve and extend the railway net to where it would adequately serve the transportation needs of the country.[28]

Public dissatisfaction continued to grow as a result of the rate rise and the rapid consolidation of many lines.

Thus, at public, as well as at prominent railroad men's behest, who realized the loss to railroads as a result of rate cutting and rebating, Congress was prevailed upon to further strengthen the Act to Regulate Commerce. In 1903, the Expedition Act called upon Circuit Courts of the United States to give precedence to and to expedite in every way, suits in equity arising under the Interstate Commerce and Anti-Trust Acts.[29] The Elkins Act was also passed in 1903. This went another step toward the strengthening of the Interstate Commerce Act by providing that the penalties provided for, therein, should apply to railway companies themselves, and not merely to their officers, and that published rates were to be considered the standard of lawfulness, and that departures from that rate would be considered misdemeanors.[30]

A further change in the law concerned modes of proof of violations of the Act. As construed by the courts, the original Act required the Commission to show that not only secret and preferential rates had been given by a carrier, but that other shippers of like and contemporaneous shipments had paid rates higher than the secret and preferential ones. It had been necessary to prove discrimination as a fact between shippers who, by reason of receiving the same services, were entitled to the same rates. The practical result of this had been to render prosecutions extremely difficult because the necessary evidence was rarely obtainable.[31] The shippers receiving rebates, as well as the carriers granting them, were made liable to the penalties of the law. The courts were

given jurisdiction for the issuance of injunctive writs against the violation of the law.

The constitutionality of the Elkins Act, as applied to its imposition of liability upon the carrier for acts of its officers or employees in violation of the Interstate Commerce Act, was upheld by the Supreme Court in New York Central & Hudson River Railroad v. United States.[32]

In 1906, Congress passed the Hepburn Act. This Act gives the Commission, after a full hearing upon a complaint or after an investigation conducted by the Commission upon its own initiative, the right to determine and prescribe just and reasonable rates and charges. Having found these rates, they then become the maximum rates chargeable.[33]

The Act extended the jurisdiction of the Government to include pipe lines, express companies and sleeping car companies. Switches, spurs and terminals were also placed under Federal jurisdiction.[34]

This Act further provided that detailed annual reports were to be rendered to the Commission by the carriers not later than three months after the close of the year to which they applied. It also provided for a uniform system of accounting and forbade the carriers to keep any accounts or records not authorized by the Commission.[35]

In 1907, a law was passed limiting the hours of service of all persons engaged in the operation of interstate trains.[35] Excessive hours had resulted in a great number of serious accidents and loss of life. Runs of thirty-six, fifty, seventy,

and at times even one hundred hours have been recorded. The first decade of the twentieth century saw the enactment of many laws regulating the length of working day for the railroad man.[36]

In 1908, a law prescribing the type of ashpans to be used on railway locomotives was passed. In 1909, the transportation of explosives was dealt with.[37]

In 1906, Congress passed a law which considerably modified the fellow-servant doctrine of common law. By the terms of the Employer's Liability Act of 1906 every common carrier engaged in interstate commerce was made liable for the death or injury of its employees. The provisions of the act were made applicable to the company irrespective of whether the person killed or injured was at that time engaged in interstate commerce, the criterion being that the company itself was engaged in interstate commerce. When the case came up before the Supreme Court, the Court invalidated the Act on the grounds that its terms were not limited to injury incurred by persons while engaged in interstate commerce.[38]

In order to meet the constitutional objections raised by the Court, Congress in 1908 enacted a measure similar to the earlier law except that its action was confined to injury or death incurred by persons while engaged in interstate commerce. This was upheld in the case of Mondou v. New York, New Haven & Hartford Railway.[39]

In 1910, the Employer's Liability Act was further enlarged to include all safety appliances used on cars and locomotives.[40]

With the passage of the Mann-Elkins Act, in 1910, the powers of the Commission were advanced again. This Act gave the Commission the power to suspend a proposed change in rates and made the charging of more for a short haul than for a long haul illegal unless permission to do so was granted to the carrier by the Commission.[41] The Commission was empowered to hold a hearing on its own authority and it was given the power to classify freight. The shippers were given relief too, in that they were permitted to specify by which of two or more routes their freight was to be carried to its destination. Furthermore, common carriers and their agents were forbidden to disclose any information regarding the route, the destination, or the consignee of any shipment when such information might be used to the detriment of the shipper.

In 1912, the Panama Canal Act was passed. By means of this Act the Commission was given general authority over the relations between rail and water carriers.[42]

Congress passed the Valuation Act in 1913. This Act provided that the Commission was to begin a valuation of all the railways of the United States. Its main purpose was to establish a basis for the regulation of rates, and the issuance of stocks and bonds. Thereupon, the Commission set up a bureau of valuation. This was a monumental task, and for many years, the Bureau of Valuation was larger than any of the other bureaus of the Commission.[43]

Labor controversies continued to assume the larger portion of the railroad stage and as concerted action became a regular

and permanent method of negotiation, it was realized that a board of three men, with the authority vested in one man, was too small a body to intrust to such serious matters. Thus was the Erdman Act replaced by the Newlands Act in 1913. This Act provided for a governmental body of three members, and in the case of arbitration, the board might consist of six members. The Newlands Act also provided that the position of the Commissioner of Mediation be one of permanency, thereby making it more probable that the work of the mediator would be more expert and consequently more acceptable to both sides.[44]

The public was still afraid of combinations of railroads that tended to raise rates. Thus, in 1914 three enactments were passed by Congress which touched the railroads in this connection, although they were not passed specifically for control of common carriers. These three Acts were known variously as the Clayton, the Sherman and the Interlocking Directorates Act.[45] As a result of the Northern Securities Case of 1904 and of subsequent determinations, the Supreme Court, in interpreting and applying the Anti Trust Acts, had rendered illegal one form of railroad cooperation after another, as the carriers had attempted through holding companies, mergers, and leases to circumvent the law. Finally, the railroad provisions of the Clayton and Sherman Acts of 1914 gave concrete legislative sanction to the results of judicial interpretation. Railroads were prohibited various forms of interlocking directorates and from purchasing, except for investment, the

whole or any portion of the stock of a competing railroad. It was specifically provided that such acquisition must not take place where competition might be lessened as a result of the movement. Under no circumstances was there to be permitted a movement toward the restraint of trade or the creation of a monopoly.[46]

Notwithstanding the great strides made by the Interstate Commerce Commission, both upon its own volition and that of Congress through the granting of new and greater powers, the Supreme Court still continued to attempt to hamper the Commission wherever possible.[47] Many times it was necessary to pass new congressional legislation in order to counteract the effects of judicial review. On the other hand, there have been many decisions handed down by the Court which have greatly enlarged the powers of the Commission. Typical of such a case is that of the Shreveport Cases.[48] This decision validated an order of the Commission which caused the railroad carriers concerned to change state-made intrastate rates to remove an unreasonable discrimination against interstate rates that had been found reasonable by the Commission. Of an even greater importance than the Shreveport Case was the decision of the Supreme Court with regard to the Wisconsin and New York Rate Cases. This enlarged the regulatory powers of the Commission by requiring all states fixing intrastate rates to avoid setting such rates below levels that have been found to be reasonable for interstate commerce by the Commission. The states may not unduly burden interstate commerce, and the Interstate

Commerce Commission is the judge as to what may constitute such undue burden.[49]

The Boiler Inspection Act of 1911 was supplemented by an additional act passed in 1915.[50] This Act of 1915 enlarged the inspection service and set certain standards as the provisions of the previous Act had been found to be inadequate to cope with the number of locomotives to be inspected. With the Inspection Act were further provisions regarding the type and usage of automatic couplers. Federal inactment has gone a long way toward the standardization of types of safety appliances in use. While the Federal laws do not demand that a certain type of appliance be used, they do demand that these appliances be fairly interchangeable.

Late in the year of 1915, the Brotherhoods, in view of rising commodity costs, and in view of changing conceptions of the position of the working man, decided that the time was ripe for an eight hour day. Early in 1916, representatives of the four railroad brotherhoods met and drew up plans for a national eight hour day and time-and-a-half for overtime. This plan was immediately presented to all railroads of the United States. The carriers were extremely reluctant to grant these new demands, but suggested submitting the matter to arbitration. However, the Brotherhoods refused the suggested plan because of alleged unfairness in previous wage settlements.[51] (Sharfman, 328) Although various types of compromises and arbitrations were suggested, all were rejected by either party. President Wilson then attempted to settle the strike by personal contact. This

failed too, so that he was prompted to suggest that the demands of the men be temporarily granted and their influence upon labor costs be definitely ascertained. When the carriers refused this proposal, the Brotherhoods countered by calling a national strike for Labor Day, 1916. In order to avoid this disastrous strike, because it threatened to be one of the most serious in all of the United States' industrial history, and because of the delicate nature of international negotiations resulting from the War, President Wilson sought relief through legislative channels. Thus, the Adamson Bill was introduced and passed almost immediately. Although the strike was averted, the Brotherhoods threatened to call another strike, because the railroads refused to obey the law until its constitutionality was proven by the Supreme Court. However, as American participation in the World War was very imminent, President Wilson induced the Brotherhoods and the carriers to submit the matter to a committee of the Council of National Defense. As a result of the decision handed down by this committee, the roads agreed to abide by the enactment. However, on the very day that this decision was handed down by the Council of National Defense, the Supreme Court upheld the constitutionality of the Adamson Act.[52] (Johnson, 194) The eight hour day became the standard for train operatives, with time-and-a-half for overtime.

Nineteen days after the Adamson Act was declared constitutional, the United States entered the World War, and at the end of 1916 the United States Government took over the operation

of the railroads. With the coming of this Federal operation of the carriers, the entire complexion of the situation changed. The relationship of the Government to railroads changed from one of regulation to one of operation. Although the carriers were returned to private operation in 1920, the relationship of the roads to the Government has never been quite the same as that which existed prior to the War. After the War, Governmental control was stronger and less haphazard.

FOOTNOTES

CHAPTER I

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43. F. H. Dixon, Railroads and Government, p. 67-69.

44. I. L. Sharfman, The American Railroad Problem, p. 333-336.

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CHAPTER II

THE WAR PERIOD

The reasons for Government control of the railroads during the War may be traced far beyond the World War itself. The entrance of the United States into the war and the subsequent Governmental operation of the railroads was merely a surface eruption. The real cause for the necessity of Government operation may be traced back to 1906, when the Hepburn Act gave the Interstate Commerce Commission control over maximum rates. Although subsequent years saw drastic rises in the prices of every commodity, and rises in operating expenses for the railroads, the Commission held railroad rates so low that the carriers were unable to meet current operating expenses. As a result of this, the railroads were unable to command enough credit to pay for necessary and desirable betterments.[1]

Up to 1906, the railroads had been able to furnish the country with sufficient transportation to meet all current needs. Frequently, the railroads had enough good sense or foresight to build ahead of the traffic. However, during the decade immediately preceeding the World War, the Interstate Commerce Commission, with its great power over rates, had been driven by a powerful and misinformed public opinion to adopt a policy which had all but crippled railroad credit. Careful investors, such as insurance companies and savings banks, refused to invest in railroad securities.[2]

In the decade between 1906 and 1916, the railroads found it extremely hard to finance current operations, let alone expansions necessitated by growth of the country. The year of 1915 marked the peak of railroad receiverships, with 42,000 miles, or about one sixth of the entire railroad mileage of the country, in the hands of the courts.[3]

Among the bankrupt companies might be found the following important roads:[4]

Atlanta, Birmingham & Atlantic	645	miles
Chicago & Eastern Illinois	1282	"
Cincinnati, Hamilton & Dayton	1015	"
Chicago, Rock Island & Pacific	7847	"
Colorado Midland	338	"
International & Great Northern	1106	"
Missouri, Kansas & Texas	3865	"
Missouri Pacific	7285	"
Pere Marquette	2322	"
St. Louis & San Francisco	4747	"
Toledo, St. Louis & Western	450	"
Wabash	2514	"
Western Pacific	946	"
Wheeling & Lake Erie	459	"

Besides these 14 important railroads, 68 smaller lines were then in the hands of the receivers. The combined capital of these 82 roads amounted to $2,264,002,178.[5]

Little new railroad building was carried on, causing the mileage of new lines built in 1915 to drop below any figure between that year and the Civil War. Between 1906 and 1915, the miles of new track built dropped from 5,623 miles to 933 miles. Furthermore, the slowing up of railroad development was reflected in the statistics relating to orders for new equipment. Orders for locomotives and cars dropped to an unprecedented low, and drastic curtailment and retrenchment in service was everywhere

in evidence.[6]

Lack of revenue also had its repercussions in the fields of labor. Because the railroad wages remained low as a result of low railroad revenue, the managers of the various lines were unable to increase wages comparable to increases in other industries. This situation gave rise to increased discontent amongst railroad employees and a general weakening of morale.[7]

This was also a period of railroad baiting. Politicians climbed to new and greater heights through their abuse of railway companies. Many types of false stories regarding the carriers gained wide circulation and public acceptance. It did not seem to matter that the reports of the Interstate Commerce Commission contradicted these claims. Few people bothered to read the Interstate Commerce Commission reports which refuted the claims that the railways were concealing large earnings, preferring to believe the words of the demigogues.[8] The result was that the United States entered the World War with impaired railway credit, a system that had not been permitted to develop so it could adequately carry a peak load and with discontented employers and employees, and impatient shippers.[9]

The gravity of the juncture was fully recognized by the railroad executives, and when the United States entered the War, they acted quickly in an effort to cope with the situation. Previously, when Great Britain had entered the War, the British Government took over the carriers and operated them through a board consisting of railroad managers. When the United States

became associated with the Allies, a move similar to that taken by the British was advocated by the managers. However, they did not wait, and took the initiative themselves.[10]

Within five days after the declaration of war, the railways organized the Railroads War Board. This Board was able to carry out many improvements in service. By means of an agreement with the Federal Government affected through the Council of National Defense, the railroads were able to carry out certain projects which would have been prohibited by the anti-pooling and anti-trust laws under ordinary circumstances.[11]

Finally, in 1917 the Commission followed the lead of the Railroads War Board, and asked Congress to permit unification of the carriers, lawfully, by the suspension of the operation of the anti-trust laws. This was to apply except in respect to actual consolidations and mergers, and to the anti-pooling provisions of the Commerce Act for the duration of the War.

The uncertainties of the situation were finally dissolved by the President when he took possession of the railroads of the country as a war measure. This action was taken under the authority granted to the President by the Army Appropriations Act of 1916.[12] This Act was probably intended to provide for an emergency which might arise in connection with Mexico in 1916. At the time of its passage, there was no immediate danger of the United States engaging in the World War.

In his proclamations and addresses to Congress, the President stressed the need for Government operation of the railroads because of their financial difficulties. Not only

were the railroads unable to cope with the increased traffic, because of their inability to get added capital equipment, but the workers themselves were also a problem. Railroad wages continued low, and resulted in much talk of strikes, and general labor unrest. Thus, in order to remedy the situation, he recommended that the railroads should be provided with financial assistance from the Government treasury in the form of loans or advances for capital purposes. Under the legislation which followed, the carriers were guaranteed a return for each year of Federal control. This return was to be equal to the average of the three years immediately prior to June 30, 1917. [13]

The Government had every advantage under the Federal Control Acts. The railways were not permitted to enter into any controversy with the Director General, as far as terms were concerned. An excellent example of this may be found in Section three of the contract which specifically provided that no carrier "might make claims for loss or damage to their business or traffic by reason of the diversion thereof which has been or may be caused by said taking or by said possession, use, control and operation."[14]

The Director General adopted a number of measures designed to increase the efficiency of the carriers and to serve the purposes of the war. Much was said concerning the great economies to be effected by this plan of Governmental operation. The Director General and the President are quoted many times on this subject.[15] Among the most important inovations may be

numbered: a short routing of traffic; unification of facilities; reduction in passenger facilities saving ten percent in passenger train miles; increase in demurrage rates to encourage prompt unloading of cars; store-door delivery in order to release equipment with a minimum of delay; sailing day plan or the fixing of dates at which package would be received at the stations for shipment; solid trainloads of commodities from point of origin to point of destination, when practicable; permits for shipment of freight under which war supplies had priority right; bituminous coal plan, under which cross shipments of bituminous coal were prevented; standardization of equipment; consolidated ticket offices; a universal mileage book; discontinuance of off-line traffic offices; changes in accounting; and a plan for the development of inland waterways, as a supplement to railroad transportation.[16]

Each of these measures was presented to the country as a method of affecting large savings. The main purpose to be served though, was the movement of troops and supplies with the least possible delay. That these measures furthered that end may be seen in that the railways were made to serve the Army and Navy as truly as though they had been owned by the War Department and had been constructed for military purposes. The needs of the country were such that the transportation machine became a highly efficient instrument for the process of waging war. Federal operation contributed to that end, and efficiently.[17] Federal control was made even more successful

by the loyal cooperation of the men, of the management, and of the shippers of war supplies. Inconvenience to the public, and to shippers not engaged in the manufacture of war supplies was manifold. The Director General, his assistants, the rank and file of railroad officials, and employees are to be complimented for their honesty, efficiency and integrity in the carrying forward of the country's war program.[18]

However, aside from military operations, this period of government management proved an interesting view of governmental relations to the railroads, insofar as operation was concerned. While the USRA proved its worth in the field of wartime direction, its advantages during peacetime are somewhat open to question.

While the War lasted, passenger service was drastically curtailed. This inconvenience was accepted good naturedly, by the travelling public until the signing of the Armistice. Shippers, too, who were not engaged in the manufacture of war goods, and who thus had no claim to prior shipment privileges, accepted the situation. Those men found it extremely difficult to get freight through to its destination. Before the end of Government operation, many shippers were sending pilots with their shipments. These persons used bribery and any other means at their disposal to get cars through to their destination and to the terminals. The sailing-day plan was also open to much criticism on the part of the public. It had a tendency to work toward the advantage of certain distributing centres.[19] The abolition of the off-line freight agency was also heralded by

the Government as an excellent example of the elimination of useless and expensive service. But the shippers soon realized that these offices had been more than merely business gathering organizations. They had relied on these offices to trace shipments and to issue reports on the probable arrival of cars. The Government was finally obliged to recognize the objections raised against the abolition of these offices, so that in the end the Government yielded to the extent of creating central freight information bureaus. But the incentive to serve and to get results was lacking in these bureaus and the shippers were not satisfied with these substitutes for a needed service to which they had become accustomed.[20]

It was clearly apparent that the freight and passenger rate existing before the era of Government control would not be sufficient to enable the Government to earn the guaranteed rental. The power to regulate rates was finally granted under sections 8 and 10., of the Federal Control Act.[21] On May 25, 1918, freight rates were increased about 25% and passenger fares were increased to three cents per mile.[22]

Labor problems under Federal control were also acute. There were the problems of making up for deferred increases before the War as well as bringing wages paid to railway workers in line with the wages paid to workers in other industries. These wartime industries were recognized as somewhat of a part time nature, and that they would have to close down with the coming of Peace. This being true, they were obliged to obtain contracts from the Government that would enable them to

buy off labor from established peace time industries. The unusually high wages paid to workers in the war time industries had the effect of completely upsetting the wage scales throughout the country. Furthermore, the war period was one of rising prices and of inflation. Coupled with this was the draining of vast amounts of man power from industry to action abroad, causing a great shortage of labor. Finally a Railroad Wage Commission was set up to investigate the pay rate situation in the railway industry.[23]

Having provided for an unbiased investigation, a Division of Labor was set up, culminating in a report handed down late in April of 1918. During May of the same year, the report was accepted almost in toto by the Director General and was made the basis for higher wages and the establishment of the eight hour day.[24]

This order granted the basic eight-hour day for all railroad employees, and granted increases effective as of January 1, 1918. The increases ranged from 43% for those who had been receiving $45.00 per month down to enough to bring those receiving $240. - $249. up to $250. per month. Many supplemental orders followed clarifying the original order and placing rules more to the liking of employee representatives. Though a large part of the increases and changes were in effect only a portion of the year, the wage bills of the railroads were $874,331,209. or 50% greater in 1918 than they had been in 1917.[25]

In 1919, the Director General sought to postpone the adjustment of further wage increases. While he succeeded in the main, he made certain changes in wages and in rules which added to the sum total of wages paid. The wage controversy

continued to rage, and was subsequently passed onto the Railroad Labor Board. That august body immediately disposed of the matter by issuing an order which added $600,000,000. more to the annual wage bill.

During the period of Federal operation of railroads, there were vast increases in the number of railroad workers. When the railroads were taken over by the Government in 1917, they had about 1,750,000 employees. There were 2,000,000 employees when the roads were returned to private operation in 1920. The great increase in railroad labor may be attributed, to a large degree, to the adoption of the eight-hour day. Under private operation in 1917, however, the number of hours worked by employees amounted to 5,438,000,000; under Government operation in 1918, the number of hours worked was 5,701,000,000. In 1926, when the largest freight business in history was handled, the total number of hours worked was 4,671,000,000, with 1,733,004 men working.[26]

Considering the quantity and quality of service rendered to the public, and the amount of transportation produced in proportion to the number of man hours, and the number of tons of fuel and material used, there was a great decline of efficiency under Government operation. By the same standard, there has been a great increase in efficiency since the rectification of the chaotic conditions of 1920. The increase in efficiency since 1920 is not necessarily entirely applicable to private management. Since 1920, great increases in efficiency of roll-

ing stock, locomotives and general equipment have enabled the railroads to get more tonnage over the rails with a minimum of man power.

Ton miles and man hours are not good criterions for the comparison of efficiency. At the end of 1917, under private operation, with the amount of tonnage moving higher than it had ever been before, serious congestion and inability to operate efficiently resulted. The Railroad Administration met the test. The ton-miles of 1918 exceeded those of 1917 and all previous years. For smoothness of operation and for efficiency, the particular type of commodity essential for war purposes was more satisfactorily transported by the Government than it would have been during the previous years of private operation.[27]

Railway earnings showed a sharp increase during the period of Government operation. Passenger traffic increased to a slight degree, in spite of the pleas of the Government against unnecessary train riding, and curtailment of facilities. In the case of freight, very little more was moved in 1918 than was moved in 1917, while 1919 showed a decrease in the number of revenue tons from 2,305,000,000 in 1918 to 2,045,000,000 in 1919. Still the income received on an average for each ton of freight was $1.24 in 1917, with increase to $1.45 in 1918 and to $1.73 in 1919. The railroads lacked by about $250,000,000 the average annual income between 1916 and 1918. They also showed about $272,000,000 less than the operating income of the first class roads in 1917.[28]

This can be explained by the fact that wage increases

granted in May, 1918 went into effect as of January, 1918. The 25% freight increase was only in effect from May, 1918, and was not retroactive. In 1919, there was an increase in the number of passengers and a slight increase over 1918 in the length of journey. Revenue freight fell from 405,000,000 tons in 1918 to 364,000,000 tons in 1919, but this decrease in tonnage was accompanied by an increase in receipts per ton-mile from $.0085 to $.0097, which meant a greater income for the carriage of less total tonnage. The deficit for the entire period of Government operation was $1,123,500,000. About $250,000,000 of this sum accrued during 1918. If January and February of 1920 is included, the deficit for the year of 1919 is $750,000,000.[29]

Federal control of the railroads may be arbitrarily divided into two parts, the war period of eleven months, ending with the Armistice, and the period from the end of 1918 to March 1, 1920, when the roads were returned to private ownership. There was a universal feeling that the undertaking was essential and good, in spite of mistakes that may have been made in operating policies. Problems that may have loomed up, particularly the labor problem and the problem of finance, were handled in such a manner as to accelerate the efficient working of the railroads as part of the war machine, rather than stalling it. The financial deficit of the first year of operation may be attributed to the fact that wage increases were in effect from January 1918, while rate increases took place from June, 1918, and

that this debt is a justifiable charge against the war account.

The second period is harder to estimate. There was much difference of opinion, between the Railroad Administration and the railroads as to when the roads should be returned to private ownership. It soon became clear that the public was not favorably disposed towards Government ownership and that Congress was expected to return the roads at the earliest possible moment. In his message to Congress in May, 1919, President Wilson indicated that the roads would be handed over to their owners at the end of the calendar year. Thus, the Railroad Administration was expected to maintain the operation of the roads pending the day of official dissolution. No long time plans could be initiated. It was a day to day administration settling only such problems as were necessary to keep the plant in operation. The situation was further aggravated by the failure of Congress to pass the necessary appropriations and by the steel and coal strikes in the fall of 1919. The situation was troublesome to the railroads, the public, and the Railroad Administration. Everyone was waiting for the infinite word of wisdom from Congress.

The pros and cons of public versus private operation cannot readily be discussed, because private operation would have been an impossibility. It would have been impossible for the railroads to consolidate and cooperate under existing law, and it is even more doubtful whether they would have even given the chance. It would seem that the whole question of costliness rests upon the attitude taken toward the Administration's labor

policy. Many types of cooperation, resulting in decreased operating expense, have been carried over into the subsequent private operation. As far as finances are concerned, the Governmental aid was indispensable and may have saved the roads from bankruptcy. The Government provided the funds necessary to bridge the gap between higher costs and revenues and added capital expense. With the growing popular feeling against rising prices and the consequent inability to raise rates, in the face of rising prices of materials and supplies, and high wage demands, few roads would have been able to escape bankruptcy. Only the most substantial carriers, with large accumulated surpluses, and with outside income not subject to federal confiscation, would have been able to weather the storm.

The Government was fully responsible for the labor policy. It established the eight-hour day with time-and-a-half for overtime, it drew up national agreements, and accelerated the development of unionism. It may also be said to have broken down local discipline and to have given the individual employee a national outlook and a feeling of national brotherhood. Combined with the indisposition to increase rates parallel to the increased wages, the deficit financiering of the Administration may be easily seen.

Notwithstanding all of the indictments against the Railroad Administration, one could not have expected the private owners to have turned in a very much better record than that of

the Administration. The railroads, too, would have been compelled to grant ever-increasing wages, and to meet the added expense would have been continuously before the Interstate Commerce Commission begging for higher rates, to meet labors demands, and the cost of capital in the open market. The effect upon prices with its tendency to multiply the increase in the price charged would have been disastrous. Furthermore, increased rates do not always bring immediately increased revenue, and in some cases, bring no increased revenue at all.

Federal railroad control, then accomplished the purposes for which it was set up. In the face of unprecedented difficulties, essential traffic, whether purely military or industrial, was moved successfully and expeditiously with an intelligent and careful regard for national ends. The restrictions which were placed upon less urgent movements were no greater than the occasion demanded, and the cost, in spite of the alleged extravagance of wage increases and the magnitude of the deficit, was reasonable in the face of the accomplishment. Many improvements of railroad property were formulated and carried out. There was no flagrant neglect of railroad plant and equipment. For the first time the railroad employee was given due consideration which resulted in greater justice to these persons and a greater stability of the transportation service. Aside from the accomplishment of war purpose, the advantages and disadvantages of federal control were indirect and incidental.

FOOTNOTES

CHAPTER II

1. W. J. Cunningham, American Railroads, p. 16.
2. I. L. Sharfman, The American Railroad Problem, p. 63.
3. Cunningham, op. cit., p. 19.
4. Ibid., p. 19-21.
5. Railway Age Gazette, October 1, 1915, p. 587; October 15, 1915, p. 676-679.
6. Ibid., December 31, 1915, p. 1247.
7. F. H. Dixon, Railroads and Government, p. 103.
8. Sharfman, op. cit., p. 68.
9. W. M. Splawn, Government Ownership and Operation of Railroads, p. 370-373.
10. Sharfman, op. cit., p. 77-78.
11. Ibid., p. 79.
12. 39 Statutes at Law 619. (Army Appropriations Act of 1916).
13. 40 Statutes at Law 451. (Federal Control Act of 1918.)
14. Ibid.
15. Dixon, op. cit., p. 129-133.
16. Director General, General Orders of the United States Railroad Administration, no. 17, April 3, 1918; no. 20, April 22, 1918; no. 21, April 22, 1918; no. 31, June 12, 1918; no. 32, June 29, 1918; no. 47, October 5, 1918.
17. Cunningham, op. cit., p. 93.
18. Sharfman, op. cit; p. 99-100.
19. Cunningham, op. cit., p. 93.
20. Ibid., p. 94-95.
21. 40 Statute at Law 451.
22. Cunningham, op. cit., p. 96-99.
23. Director General, op. cit., no. 5, January 18, 1918.
24. Ibid., no. 27, May 25, 1918.

25. Cunningham, op. cit., p. 120-127.

26. Splawn, op. cit., p. 375-378.

27. Cunningham, op. cit., p. 126-129.

28. Sharfman, op. cit., p. 160-163.

29. Director General, Report of the Director General of Railroads, p. 45-47.

CHAPTER III

THE TRANSPORTATION ACT OF 1920.

On December 24th, 1919, the President issued his proclamation announcing the return of the roads to their owners on March 1, 1920.[1] The railroad problem once again became acute. It was up to Congress to devise legislation under which the roads should operate once that the Government had withdrawn its support. It would have been impossible for the railroads to continue operation if some remedy was not found, as the railroad income had fallen exceedingly low. Some provision had to be made by which earnings should cover expenses if financial disaster were to be averted. The confidence of the investing public had to be restored to the railroads too, as much new capital was required by the roads. On the operating side, there was much to be done to transform a nationally conceived organization into efficient individual operating units. Labor organization and morale had to be reconstructed. Equipment scattered to the far ends of the country had to be returned to its rightful owners. If the statements of the officials are to be accepted, there was a vast amount of maintenance work to be done, both on roads and on equipment, before facilities could be restored to pre-war standards. These difficulties gave rise to the transition period, which resulted in a "guarantee period".[2] Many innovations were put through that would never have been tolerated in a period other than in one of mental upheaval such as that which follows a war. There was

a definite popular reaction against continued government operation, culminating in much approval of more effective and extensive government regulation by public and corporations alike.[3] As a result of this, an elaborate amendment was passed strengthening the powers of the Interstate Commerce Act.

This legislation was the result of extended and profound investigation by those leaders in Congress who were directly connected with railroad affairs. A committee had been set up in 1915 by President Wilson, consisting of members of both the House of Representatives and Senate.[4] After the War the President stated that it would be disastrous to the country and to the railroads if the old conditions remained unmodified. The Interstate Commerce Commission also made public a report in which it stated that greater cooperation was necessary between the carriers and Government.[5]

Various governmental and private agencies attempted to formulate a working plan for the relation between government and the carriers, but they all were essentially the same. They believed that;

1. Private ownership with government control was best.
2. Carriers should be consolidated into fewer and stronger companies.
3. Consolidation should be carried on under governmental supervision.
4. Returns to railroads should be guaranteed.
5. Rates, labor and finance should be subject to governmental supervision.[6]

One plan differed from all of the others. This was known as the "Plumb Plan". It was based on government ownership propaganda, and made very little impression on Congress, although it was heartily endorsed by the trade unions. It provided that the railroads were to be bought by the government and then leased to a quasi-governmental, capitaless corporation.[7]

On October 23rd, 1919, the Cummins Bill was reported to the Senate, where it passed on December 20. The Esch Bill was reported to the Representatives on November 10, and passed on November 17. There was such a wide divergence between the two bills that it was apparent that some form of compromise measure was necessary. The result of this compromise is known as the Esch-Cummins Act, or Transportation Act of 1920. It was under this Act that the carriers once again began to operate under private management.[8]

The Esch-Cummins Act added to the powers of the Interstate Commerce Commission and effected the return of the carriers to private ownership after a little more than two years of Federal operation. The importance of the Transportation Act of 1920 lies in the fact that it was planned, and that the provisions contained therein came as a result of deliberate consideration. This Act marked a new era of government relationship to the railroads. Hitherto, governmental enactments were apt to grow as a result of some type of pressure, either by the railroads or by the public. From this time, regulation was less haphazard,

and more planned and rational.

Extensive provisions defining and fixing the relations of the employer and the employee were to be found in the machinery of the Transportation Act. Two new methods were created for the handling of labor disputes, one being the various adjustment boards and the other being the Railroad Labor Board.[9]

The adjustment boards were to be established by agreement between the carriers and their employees through employee organizations. The number of adjustment boards was to depend upon the popularity of the plan, it being felt that more adjustment boards would be set up as the plan gained headway. Such questions as the size and term of service and the territorial jurisdiction were to be left to the discretion of the interested parties. Each board was to sit upon cases involving grievances, rules and working conditions, providing these questions could not be settled through concerted action by the employees and the railroads beforehand. No penalty was to be invoked for violation of board decisions.[10]

In name and in function, these adjustment boards were like those in operation during the World War. However, there was the difference that the war boards were the result of a decree, whereas these boards depended for their existence upon the willingness of the parties concerned. The war-time boards were national in scope, whereas the jurisdiction of

these boards depended upon the terms by which they were created.[11]

A Labor Board was also provided for in the Transportation Act. This Board of considerable dignity and permanence was to consist of nine men in all, three from each of the fields of labor, railroads and public. All persons for this Board were to be appointed by the President out of specified lists submitted by the carriers and by labor, respectively, to represent their fields. The salary was to be $10,000 per annum and they were to have a term of office of five years. The jurisdiction of this Board was to include questions of wages, grievances, rules and working conditions which the individual adjustment boards could not settle either because of lack of a majority decision or because they had not been organized. The Board had its basis in the war-time and pre-war tribunals for arbitration and investigation. However, it differed from these earlier boards because it was permanent and because it was able to take jurisdiction and to render a decision without the necessity of prior application on the part of either party of the dispute. The first of these characteristics caused the Board to become expert, and the second caused it to be active.[12]

The basic assumption of the law of 1920 with respect to earnings was that Government initiative and a public statement of policy as to rates were necessary in order to enable the carriers to obtain funds for the proper maintenance and

development of their service. However, investment at reasonable rates of interest was not forthcoming, partly because of the uncertainty of railroad securities and partly because of the competition of tax-free securities. Vast sums of money were necessary to carry on the railroad activity in the United States for the purchase of new equipment and to cope with the rising competition of the highway transport and the private automobile. It was not deemed wise to put the Government in the position of lending money to the railroads, whereupon a system of guarantees was worked out and included in the Transportation Act. These guarantees amounted to subsidies on the part of the Government.[13]

The guarantee that Congress saw fit to extend to the railroads was not one of interest, but one of fixed rate. The Interstate Commerce Commission was given extensive powers to regulate the railroad rates, so that the railroads might enjoy a fair return on the value of their property used in the services of transportation. It was the intention of the law that the Commission should continue finding the valuation of the railroads, as it had been empowered to do under the Valuation Act of 1913, so that it would be possible to set rates in relation to the valuations so found.[14]

A rather obnoxious provision, for the division of earnings over 6%, was also contained in this Act. Earnings above 6% were to be divided between the Government and the railroads. The amount of money was to be determined by means of the

valuation which the Commission was supposed to find. The Act stipulated that half of the excess earning of the carrier might be used for any lawful purpose after a reserve of 5% of the value of the property had been accumulated. The other half of the excess earning was to be placed in a revolving fund, to be set up by the Commission, from which the carriers might borrow for the purchase of supplies and equipment.[15] The purpose of the excess earnings provision was to equalize the position of the weak and the strong roads who, because of their position are unable to make the same money at equal rates as the stronger competitor in a better locality. The constitutionality of the provision was upheld by the Supreme Court in the Dayton-Goose Creek Railway Company case.[16] The administration of this provision proved a complete failure.

The jurisdiction of the Interstate Commerce Commission over railroad rates was also changed and strengthened through this law. The power to fix a minimum rate was extended; the total period during which a rate might be suspended, pending investigation, was reduced from ten to five months; the length of force of a particular rate was left to the discretion of the Commission; and the long and short haul clause was considerably modified.[17]

The powers of the Interstate Commerce Commission were greatly extended over the railroads as far as construction and abandonment are concerned. The new law required the preliminary approval and the issuance by the Commission of a

certificate of public convenience and necessity before any line or part of a line could be built or abandoned. Although it was limited only to carriers engaged in interstate commerce, inasmuch as most railroads are engaged in interstate commerce the jurisdiction of the Commission extends over practically all the lines of the United States.[18] In some cases, the power of the Commission extends to intrastate carriers as well.[19]

The powers of the Interstate Commerce Commission were also greatly extended in the fields of operation. The Commission had the right to regulate practices concerned with receiving, handling and storing of property, and of certain safety devices. With the passage of the Transportation Act, the Commission was given jurisdiction over freight locomotives, as well as cars and special equipment. The jurisdiction of the Commission was made to cover car service; the movement of cars where needed without respect to ownership; the compelling of the use of joint terminals; and the direction of routing. If the Commission found that any company was not able to meet the needs of the public, it was enabled to order any railroad to provide safe and adequate facilities for car service and even to extend lines. The Safety Appliance Acts now were widened so that the Commission might compel the use of automatic train signaling apparatus, in addition to the enforcement of the older laws.[20]

For the first time, the Transportation Act gave the Commission the right to regulate and control the issuance of

railroad securities. It became unlawful for the carriers to issue any type of security or to assume any responsibility until authority from the Interstate Commerce Commission had been granted. Certain directions were issued to the Commission for the administration of its new power, and in this jurisdiction the Commission was declared to be exclusive and plenary.[21]

The purpose of this clause was to prevent the glaring malpractices in the issurance and sale of railroad securities such as had become evident to the public through the investigations carried on by the Commission concerning the New Haven, the Pere Marquette, the Rock Island and the St. Louis and San Francisco Railroads. Many states already had passed laws concerning the issuance of railroad securities. The substitution of the Federal law for that of the state was a help to the carriers in that they were relieved from the necessity of complying with various and conflicting state statutes. Furthermore, the public interest served in that central regulation was much easier to enforce than state regulation, and more likely to express a uniform and consecutive policy.[22]

The Transportation Act of 1920 gave the Commission access to all documents, accounts and papers kept by the carriers subject to the jurisdiction of the Act. The Commission was also empowered to prescribe the classes of property for which depreciation charges could be set aside, and the percentage of depreciation to be charged in each class.

The Commission was also called upon, through the Act, to

prepare a plan by which the railroads of the country might be consolidated under a limited number of systems. Very little was done, as far as this provision was concerned. After prolonged deliberation and many hearings, the Commission came to the conclusion that the plan was impractical and asked Congress to relieve them of the responsibility of attempting to formulate such a plan.[23] Little further was done along that line, until the office of Federal Coordinator of Transportation was set up, to be discussed in a later chapter. Under other provisions of the Act, the Commission was empowered to move toward eventual consolidation by its power of approving applications for the grouping of certain railroads through stock ownership or lease so as to bring them under one management.[24] Although there was much discussion concerning these amendments and the exact status of the Commission in relation to these matters, gradual and permissive consolidations have gone forward with orders from the Commission approving such grouping as being in the public interest. The anti-pooling section of the Act of 1887 was modified in 1920, as well. This was done to permit the railroads to pool their freight or their earnings, after having obtained the permission of the Commission.[25]

The foregoing summary of the Transportation Act is intended merely to outline its principal features. Subsequent legislation, in recent times, depends wholeheartedly upon this, the first of really organized railroad legislation. The action

of the Interstate Commerce Commission, the Railroad Labor Board and subsequent legislation fall within the scope of the following chapters. Suffice it to say that practically all of the relations of the Government and the railroads in recent times will find their source springing from the Transportation Act of 1920. The Transportation Act of 1920 was very much similar to the "Magna Charta" of an earlier period. Although both documents contributed very little that was new to the body of law, they served their purpose in codifying and bringing the law up to date.

FOOTNOTES

1. I. L. Sharfman, The American Railroad Problem, p. 120.
2. W. J. Cunningham, American Railroads, p. 221-225.
3. F. H. Dixon, Railroads and Government, p. 342-343.
4. Joint Committee on Interstate and Foreign Commerce, Report on Railroad Conditions, 1st Session, November 20, 1916-November 19, 1917.
5. Cunningham, op. cit., p. 221-225.
6. Sharfman, op. cit., p. 358-364.
7. S. T. Daggert, Principles of Inland Transportation, p.542-543.
8. Dixon, op. cit., p. 214-225.
9. Sharfman, op. cit., p. 176, 428-429; Cunningham, op. cit., p.286.
10. C. B. Aitchison, Interstate Commerce Acts, vol IV, p.3377-3379.
11. Sharfman, op. cit., p. 177-182.
12. Dixon, op. cit., p. 313-321.
13. Daggert, op. cit., p. 552-555.
14. Aitchison, op. cit., vol. IV, p. 2908-2910.
15. Ibid., vol. III, P. 2103-2104.
16. Dayton-Goose Creek Railroad Co. v. United States, 263 U. S. 456.
17. Aitchison, op. cit., vol. IV, p. 2899-2901.
18. Sharfman, op. cit., p. 410-412.
19. Colorado v. United States, 46 Sup. Ct. Reporter 452.
20. Aitchison, op. cit., vol. IV, p. 2996-3000, 3017.
21. Ibid., vol. I, p. 64-69; vol. IV, p. 2686.
22. Sharfman, op. cit., p. 455-456.
23. Interstate Commerce Commission, 59th Annual Report, p. 13-14.
24. Aitchison, op. cit., vol. I, p. 18; vol. III, p. 1389.
25. Ibid., vol. I, p. 20; vol. III, p. 1396.

CHAPTER IV

FINANCIAL RELATIONS

As the subsequent chapters of this thesis will indicate, the Federal Government has not yet been able to coordinate all the factors which regulate the railroad transportation of the country. The task which is continually facing the Government is one of efficient and constructive legislation for the regulation of the carriers. This requires an understanding of the problems to be solved and the adoption of legislative and administrative policies which will best solve the issues at hand.

The railroads are more fully regulated both by the individual states and by the Federal Government than any other form of transportation. The railroads are, and will continue to be, the chief carriers of freight. Their continued operation is essential to the well-being of the country insofar as agriculture, industry, and commerce are concerned in peace and in war. As railroad transportation is mostly interstate, it is only right that regulation be placed in the hands of the Federal Government, where standards and policies may be fixed on a national scale.

The second part of this thesis will be given over to the major problems and policies which face the continued operation of the railroads under the present governmental tie-up. References to state control, since it is rather limited in scope, will be made only when it is deemed absolutely necessary.

In 1920, when the Transportation Act was passed, an attempt was made to strike at the very root of the carrier problem. It was thought that the very best way to do this would be to give the command over to some all-powerful government agency. Therefore, the Interstate Commerce Commission has become one of the strongest branches of government. It not only controls the living actions of the carriers, but it also dictates their life and death. In a sense, the Interstate Commerce Commission is a type of all-seeing providence controlling, in this sense, not the affairs of man, but rather those of the railroad. This Commission is empowered to say what new line is to be built or what existing line is to be added to. Then, having obtained that permission, the carrier must also allow the Commission to decide how this new arm is to be financed. The entire railway net of the country is thus closely controlled by the Government through its agent, the omnipotent Interstate Commerce Commission.[1]

The requirements of the public and the railroads alike are guarded by the Commission. This is best evidenced by the Commission's requiring the obtaining of a certificate of public convenience and necessity before any new line is constructed, a power granted by the Transportation Act of 1920. Before the enactment of this clause giving the Commission the power to decide when, where, and how a new line was to be constructed, a carrier serving a territory profitably and adequately could be harmed beyond measure by the construction of a competing line, built not because of public need, but as a speculative enterprise. The builders

of the new road hoped that the traffic of the future would warrant the existence of two roads in some cases. However, the majority of construction was carried on in the hope that the existing line would feel obliged to buy the new road in order to safeguard its own traffic. Such tactics were usually carried on at a tremendous profit to the promoters. No better example than the West Shore Railroad presents itself for analysis. There was no justification for the building of that poor line. However, it was known to the piratical promoters that the New York Central would feel obliged to buy this paralleling road, and buy it they did, at a tremendous profit to the promoters. Had it been necessary to obtain a certificate of public convenience and necessity, the railroad would not have been built at that time.[2]

The wisdom of requiring such a certificate cannot be denied. A case in point is the denying of a certificate to the backers of a new line, in 1925, to be known as the New York, Pittsburg and Chicago R. R. This was to be a new low-grade line across the State of Pennsylvania to be built at an estimated cost of 205 millions of dollars. While this line had unquestionable merits, as it would have shortened the distance between the Delaware River and Pittsburg by 74 miles and would have crossed the mountains at a much lower grade than any of the existing trunk lines, it was felt by the Commission that there was not enough traffic to warrant an additional line and that the return on investment would be too low

to warrant the expenditure.[3] Subsequent developments in business and in industry have proven the worth of the Commission's refusal to allow the work to proceed.

This application is interesting because it was before the Commission for an exceptionally long time. In 1925, an examiner, after hearing the testimony, refused to grant his approval and recommended that the certificate be denied because an adequate survey to determine possible traffic had not been made and that the estimates of operating economy were defective. The case came up before the Commission again in 1929.[4] However, a decision was not handed down until late in 1932. General decline in business and in the railroad industry occasioned this, and indicated "the impropriety of the construction of any new railroad mileage in the east in the near future". Notwithstanding "the obvious superiority of the line proposed and the value as an additon to the nation's transportation system, providing that additional traffic could be found to justify the construction without corresponding injury to existing routes", the Commission was forced to conclude "that neither present nor future public convenience and necessity has been shown, nor can be shown, to require construction of the proposed line".[5]

Although the case just referred to was one in which the Commission refused to allow the construction of a new line because of the fear of too much competition, there is also a case on record tried at just about the same time that permitted

the construction of a line to increase competition. This new construction was a road of 204 miles across the northeastern part of California from Klamath Falls, Oregon, to Keddie, California.[6] This construction was undertaken jointly by the Western Pacific and the Great Northern Railways. It connected these two lines and enabled the Great Northern to reach San Francisco Bay and other Californian trade centers via the Western Pacific. The Western Pacific was able to compete in the traffic moving east and west from Utah and Colorado to the Pacific Northwest. Prior to the construction of this line, the Southern Pacific was the only line connecting California with Oregon and the roads north of Portland. The Southern Pacific also had a distinct advantage over the more northerly trans-continental lines in handling traffic between California, the Dakotas, Montana, and Minnesota, through which the northern lines passed to Oregon and California. With the construction of the Keddie-Klamath Falls branch, the Great Northern now was able to utilize the Western Pacific and connect its territory with the coast by a line which is competitive and much more direct than the Southern Pacific and its connections. Although the Southern Pacific vigourously opposed the construction of this connection, the certificate was granted becuase the Commission felt that the line was necessary to the territory through which it passes and because it provides competition for the moving of traffic to and from Utah, California, Montana, the Pacific Northwest, the Dakotas, and Minnesota. It would be well to recall, at this point, that

the Commission still thinks in terms of the competition theory. Although the line was justified from the point of necessity to that particular territory, the Commission was also prompted to grant the certificate on the basis of the necessity for intersystem railroad competition.

These cases have been brought in and explained at some length to exemplify the type of authority the Commission is exercising in its right to grant or refuse the building of new lines. The railroad industry and Government regulation have come a long way since the days of the building of the West Shore. It is clear that some such Government regulation is necessary for the orderly operation of our railroad machine. However, it seems foolish to attempt to justify its approvals or denials partially on the basis of competition. Railroad regulation has gone far enough to prevent any of the inherent evils of transportation monopolies in given areas.

As the majority of applications for certificates were for the construction of short lines and extensions since 1929, very little new construction has been carried out because business conditions have not warranted the new undertakings. As the Annual Reports of the Interstate Commerce Commission give, year by year, the number of applications filed and the number of certificates granted, it is easy to follow the trend of railroad building. During the year of 1936 six certificates authorizing 107 miles of line were granted. In the 16 effective years of the Transportation Act, from 1920 to 1936, the

Commission approved a total of 9,956 miles of new line of which only 6,809 miles had been built. During 1937, 8 certificates were issued authorizing the construction of 38 miles of new line, and in 1938 eleven were granted for the construction of 36 miles of line. Information is not available concerning the amount of mileage actually constructed, however.[7]

The Commission was also granted the equally important task of approving of the abandonment of railroad lines. This clause was included in the Transportation Act in order that no section of the public should be deprived of transportation services upon which they depended for their well-being. When a railroad company builds a railroad or branch line, communities and factories of various sorts spring up along the right of way. The company then has an obligation to serve the companies and communities dependent upon it, and it is required to continue operation until it can no longer remain in service or until it can be proved that other means of transportation are to be provided. In many cases the line in question is a small branch of a large system and its continued operation can be maintained without placing an undue strain upon the parent road. Permission to abandon is given with little question when industrial changes and development of non-rail transportation make the continued operation of formerly long and profitable lines burdensome.[8]

A case in point is that of the Chicago and Eastern Illinois Railroad. This line was permitted to abandon the Chicago and

Illinois Coal Railway Company in 1922. This 162 mile branch was originally constructed to bring bituminous coal to the Chicago market. At the beginning of the road's history, the transport of this coal made up 70% of the traffic traveling over this road. In time, the coal mines began to dwindle and the road soon found itself in a position of not being able to earn enough revenue to maintain its line in a fit condition for operation. Since the parent company was not prosperous, it was most impractical to allow the continued operation of an unprofitable line which threatened the financial breakdown of an entire system. Therefore, the right of abandonment was granted.[9] A still longer line was abandoned in 1923 when the Commission permitted the Chicago, Peoria, & St. Louis Railroad to cease operation. This line ran between Pekin and Grafton, Illinois, a distance of 234 miles. The road served an agricultural and mineral section of the country, but it was seriously hampered in its operation by the existence of other and stronger roads serving the same territory. However, when a concrete highway was completed in 1922, which paralleled the railroad for nearly its entire distance, the railroad's abandonment was permitted when it was discovered that the accumulating deficits made it unprofitable as well as unsafe.[10]

Since the country depends to a very great extent upon railroads for transportation, it is essential that the abandonment of major roads be prevented wherever possible. Such was the condition which followed the financial crash of 1929. Many

of the more important roads have since found it extremely difficult to continue operations, but they have not been permitted to abandon because they are of essential necessity to the country. Up until the end of 1936 the Commission had received 1,267 applications for abandonment of 22,434 miles of railroad. Of these, 1,070 certificates were granted permitting the cessation of 16,594 miles of road.[11] In the six years between 1930 and 1936 the Commission issued 878 certificates authorizing the abandonment of 9,950 miles of line. In the period 1936-38, orders have been issued permitting the abandonment of 3,531 miles. No information is available as to the actual number of miles abandoned, however.[12] The Commission stated in its 1934 report that "the reason most often advanced for abandonment was insufficient traffic, resulting from various causes, including failure of expected traffic to develop, exhaustion of sources of traffic in the cases of forests and mines, and losses of traffic to competing lines of railway or other means of transportation."[13] The long and severe business depression beginning in 1930 and the rapid increase of traffic of unregulated motor carriers struggling to maintain themselves through competition among themselves and against the railroads would have accounted for much larger mileage abandonments, if the carriers could have withdrawn service from unprofitable lines at will. Even with public control of abandonment, the mileage abandoned since 1920 has been double that of the mileage constructed since that date. This has accounted for a decrease of the nation's rail lines by about 10,000 miles.[14]

While the present abandonment of the rail-lines may be temporary, pending an upswing in business conditions, any future railroad construction will take place at a much slower pace than in the past. The period of wild railway building is past. All future rail-lines will be thoroughly evaluated before actual construction is begun. The rail-lines of the future will have to stand the test of competition with railroads as well as with that of the non-rail carriers.

The issuance of stocks and bonds by the carriers is now closely controlled by the Interstate Commerce Commission. By the Transportation Act of 1920, after they have obtained the permission of the Commission, railroads may issue stocks and bonds either to secure funds for new additions, to refund existing obligations, or to reorganize their financial set-up. The Commission also dictates the type and amount of the securities and the price at which they are to be offered. The Government regulation of the financial structure was designed to be as stringent as its regulation of the construction and abandonment of rail-lines.

But this was not always the case, as the railroads originally received their charters from the states, the element of control rested with these bodies. However, as the railroads began to grow in number, it soon became apparent that a measure of control was necessary. Thereupon, the separate states began the passage of laws regulating the financial status of the railroads, but none of the laws were uniform among the

states.[16] Under state jurisdiction it is impossible to get a uniform passage of laws and their interpretation. The Interstate Commerce Commission realized the limiting features of such a system and recommended Federal regulation of railroad securities as early as 1907. When the message came up before President Taft, he had it included in the Mann-Elkins Act of 1910. However, this clause only provided that an investigation be made on the subject and the findings turned over to the President. The Federal Securities Commission, resulting from this clause, handed down a report in which they did not favor Government regulation of securities, but they did recommend that the carriers be required to give the Government full information regarding the issuance of securities. The Security Commission felt that the publicity attendant upon such a procedure would afford a full measure of protection to the public and investors. Although the report was considered, Congress refused to accept the recommendations. Little would have resulted even if the idea had been utilized. Very little control can be exerted upon a corporation if the facts of the case only come to be known after the act has been committed.[17]

It was becoming more evident that some form of Federal control was imperative. The financial wrongdoings of the New Haven, Pere Marquette, the Alton, and other roads made the question even more important.[18] The culmination of this pressure came with the passage of the Transportation Act of 1920. Here, the Interstate Commerce Commission was vested with the

broad powers of regulating the financial structure of the carriers as provided in the Act. The power was given to the Commission for the purpose of protecting the general public by preventing unwarranted additions to railway capitalization, to prevent unfair practices against the investor, and to protect the railroads from the paying of more than they should for the capital needed to meet their requirements.[19] As things have transpired, the provisions of Section 20a of the Interstate Commerce Act have proved to be sound in principle and wisely and efficiently administered.

Railroad securities are issued for the purpose of securing new funds for new construction, to refund maturing obligations, to return funds to the road's treasury for investment in road or equipment made from income, and to obtain funds for the maintenance of service during a period of slack traffic or of exceptional expansion.[20] Carriers also issue bonds as security for short term loans, as provided by paragraph 9 of section 20a, as security for loans made by the United States to obtain funds to meet sinking fund requirements, to exchange for bonds of subsidiary companies, to carry out a plan of financial readjustment, to meet current indebtedness, or to have bonds in the treasury that the carrier may issue from time to time in accordance with the Commission's orders. The securities that a railroad company may need to issue to purchase the property of another railroad company in bringing about a consolidation that has been approved by the Commission are

also required to meet with the approval of the Commission.[21] In the Emergency Transportation Act of 1933, it is provided that a non-railway organization may only acquire control of railway companies by stock ownership with the consent of the Commission. When the holding company does receive the permission from the Commission, it may issue securities only against the railroad by complying with the regulations of the Commission as prescribed by Section 20a of the Interstate Commerce Act.[22]

Under Section 20a of the Interstate Commerce Act, the Commission is bound to administer and determine the general requirements to be met by the carriers in issuing securities, and to regulate the action taken in the case of each particular issue. The Commission also regulates the carriers' financial practice. It is very hard to draw a line between regulation and management. The Commission should be commended for the manner in which it has been able to carry out its duties and yet not step beyond the bounds of jurisdiction given to it by the Interstate Commerce Act.[23]

The Commission has to consider whether a new issue of securities will be of benefit to the public served and whether the project for which the securities are to be issued can be carried out without injury to investors and to other carriers. If the purpose of the securities is approved, the Commission will then consider whether the securities the carrier proposes to issue are of the proper amount and kind and whether they

are of such a nature that the Commission can approve of their price and manner of sale.[24] Were the Commission to decide all of these questions by applying certain inflexible norms, it could not help but remove the management of finances from the hands of the railroad companies. However, by considering each case in the light of the particular facts at hand, by conferences with the company officials, and by holding a hearing when one is requested by parties who will be affected by the decision, the Commission has been able to play a helpful and advisory role, and thus to regulate rather than manage the affairs of the carriers.

At the beginning of the regulation of securities in 1920, the Commission gave unusual attention to the objections raised by those who were opposed to the issue or to the manner in which the issue was to be used. If no objection was raised, or if the objections were not convincing, the Commission gave its approval without requiring the road to prove the public necessity of the proposed expenditure or to show that the particular kind of security to be issued was the type that should be issued.[25] This policy was soon changed by requiring the carrier to prove that the expenditure was to fulfil public convenience and necessity, and a further step was taken in control when the Commission decided to regulate the type, selling price, and manner of sale of new issues of securities. The carrier will usually arrange for the sale of the securities with a banking house pending the time when the new issue is

approved by the Commission. The Commission will then be informed of these arrangements and approval will take place, otherwise the carrier will have to continue negotiations with the bankers until terms favorable to the Commission are reached.[26] A further step in control has been taken by the Commission in recent years. The Commission now reviews the amount of money to be paid to the bankers for the distribution and sale of the securities. In the case of equipment trust certificates, the Commission requires bids from several possible purchasers.[27]

The Bureau of Finance, a branch of the Commission subject to the supervisory control of a division of the Commission, has been empowered with the right to issue certificates of public convenience and necessity to regulate the issuance of securities and the assumption of financial responsibility by the carriers. The administrative policy practiced by this Bureau was outlined in an order issued by the Interstate Commerce Commission on February 19, 1927. This order embodies a complete set of requirements to be met, and the information to be supplied by carriers seeking approval for new security issues.[28]

According to the statute, the Commission is empowered to approve of a security issue or financial assumption by a carrier only if the carrier's action is "compatible with the public interest".[29] Although the statute does not define closely what action is made necessary by this requirement, the statute does indicate in a general way what is meant by compatibility with the public interest. It states that the Commission shall issue an approval only if the proposed security issue or financial

assumption is for some lawful purpose, necessary for proper continuance of service by the carrier for the public good. However, the proposed security or financial assumption must in no way hamper the performance of that good. The Commission has held that property acquired by the carrier, through the issuance of new securities, shall be property used for the betterment of transportation.[30] Although the Bureau generally demands that the prospective earnings be somewhat in excess of operating expense, there are cases on record where approval was granted although the proposed purchase gave no prospect of being profitable. In these cases, however, it was felt that the property would benefit the carrier's system and services as a whole, and therefore would be beneficial to the public.[31]

Unless new securities issued by the carriers are for the reduction of capital debt, there will be an increase in the carrier's capitalization. The Commission is bound to decide whether the carrier should be permitted to add to its capital debt for the purposes set forth in the application. This decision necessitates the consideration of several factors, such as the necessity for the proposed issue, the carrier's present capitalization and assets, the purpose and the use to be made of the funds accruing from the new issue, and whether the carrier proposes to issue a stock dividend or add to the cash balance in the treasury.[32]

Where a reorganization is planned, the Commission is in an

excellent position to render much service to the carrier, their investors, and the public served. Before the passage of the Bankruptcy Act of 1933 the roads were reorganized in the interests of the creditors through the process of receivership, an unsound and expensive procedure. Now, by reason of Section 77 of the Act of March 3rd, 1933, as amended by the Acts of August 27, 1935 and of June 26, 1936, the Commission shares the responsibility of reorganizing insolvent carriers with the courts.[33] Insolvent carriers are placed in charge of trustees selected by the court and approved by the Commission. After a plan of reorganization has been worked out it is submitted to public hearing, thence to the Commission for its approval. The Commission passes it on to the court and then to the creditors and stockholders. When all the requirements of the statute have been complied with, the Commission is empowered to grant authority for the issue of any security, assumption of obligations, transfer of property, and affect consolidation or mergers of property to whatever extent it deems necessary for the proper carrying out of the proceedings. In order to make Section 77 of the Bankruptcy Act of 1933 more helpful to the railroads, certain changes were made through the recommendation of the Commission, by an Act approved August 27th 1935.[34]

It is necessary for the Commission to seriously consider the types and kinds of securities the railroad company proposes to issue and the price and method of selling the securities

when they are issued. Were the Commission not to consider these questions, it should be much less helpful than it is. It could not protect the public and the sotckholders against improper financial practices, nor could it regulate with an eye toward the development of a sound general financial policy for the carriers. While it is necessary that all of these things be considered very carefully, it is also necessary that the directors and officials of the carriers not be relieved of the responsibility and duty of determining the financial policy of their companies. It is the job of the Commission to cooperate with the financial officials of the carriers, to stop unsound policy and to further and approve of policies that will work toward the benefit of the railroad companies and the public good.

The Bureau of Finance has succeeded in carrying out these ends. Under ordinary circumstances, the carrier will arrange with a banking house for the price at which the securities will be sold to the bank or syndicate, and the price at which they then will be offered to the public. An informal conference will follow, at which the Bureau of Finance will either approve of the steps or make such suggestions as they deem necessary and advisable. If the suggestions are acceptable to the banking house and to the carrier, the carrier will then file its application for approval with the Commission. The Commission then sends a copy of the application to

the governor and public service commission of each interested state, giving them the opportunity to object if they are so minded. After an investigation of the circumstances is held, the application is either granted or rejected by the Commission. About thirty days intervene between the filing of the application and the handing down of the decision.[35] During 1937 168 applications were received, of which 164 were granted and 5 dismissed. The 164 applications authorized the issuance of new securities and the assumption of debt to the extent of $417,883,882.77 and 809,450 shares of common stock without par value.[36] In 1938 105 out of 109 applications for the issuance of new security were granted. The actual issue was $64,795,067.90.[37]

When the Reconstruction Finance Corporation came into being in February of 1932, the Commission was given the power of approval or disapproval of loans solicited by the carriers from that Corporation.[38] From February, 1932 until October, 1936 164 carriers applied for loans from the Corporation, of which 71 applications were approved by the Commission. To the end of 1936, the Corporation had loaned the railroads $516,206,239 of which $171,048,791 had been repaid by the borrowers to the Corporation. Only four additional applications were made during 1937, all of which were accepted.[39] These loans totalled $20,098,805. During 1938 applications filed by 12 carriers have been approved, authorizing the borrowing of an aggregate of $46,103,500, from the Reconstruction Finance Corporation.

The National Industrial Recovery Act of 1933 authorized the Public Works Administration to make loans to the railroads for equipment and maintenance work. Somewhat more than 200 million dollars was advanced on short term loans. On April 8, 1935, the Emergency Relief Appropriation Act was passed which made the funds of the Public Works Administration available to the carriers until June, 1937. Little additional use was made of this fund, however, as only one application by the Norfolk Western Railroad in the amount of $84,375 was approved between 1936 and 1937.[40]

The Reconstruction Finance Act was extended for two additional years in January, 1936. At that time, several amendments were made to the Act which gave the Corporation wider scope in its dealings with the railroads. A maximum of 350 million dollars was placed upon further loans and purchases by the Government in addition to advances previously made. The Act was extended for two years more in 1937.[41] When the statute was amended in 1935, several of the suggestions made by the Commission in its report of 1933 were utilized. The Commission had suggested that sinking funds be set up out of net income of the carriers for the purpose of retiring part of the funded debt before maturity. The Commission further suggested that if the funds were not voluntarily established, the Commission could compel their establishment through the power entrusted to it by Section 20a of the Interstate Commerce Act, as a condition for the issuance of further bond securities.[42]

The Commission's knowledge regarding the condition and needs of the carriers and its experience in regulating security issues have enabled it to be of great service to the Government in avoiding mistakes in the granting of temporary aid to the carriers to enable them to meet their financial responsibilities, to better carry out operations for the public good and to assist in giving work to many persons who would otherwise be unemployed.

The Commission also exercises jurisdiction over railroad consolidations. In this connection, the Commission's authority over the carrier's securities assumes an added importance. Under the Transportation Act of 1920 the Commission was given the right to exercise control over the issue of securities in connection with consolidation. It was able to control the acquiring of one railroad by another or the combining of two or more railroad companies under a new railway company, but it was not able to control the securities issued by a non-railway company issued to acquire financial control over railroad companies.[43] The condition remained static until 1933 when the Emergency Transportation Act was passed. In this Act, the Commission was able to control the securities of non-railway companies which might attempt to gain control of carriers. Once the non-carrier corporation had gained control of two or more railroad companies through stock ownership, it at once became subject to Section 20 of the Transportation Act.[44]

The Commission was greatly strengthened through the

Emergency Act of 1933. It was able to gain greater authority over the financial operations by which railroad grouping and the concentration of railroad control are being accomplished. The railroads and railroad officials were making large use of non-rail holding companies not subject to Commission authority to affect new railroad consolidations or to bring a number of railroads under a single financial organization that might be controlled by a few persons. Such was the case of the Vaness Corporation and the Alleghenny Corporation, controlled by the Van Swerrigan brothers. These companies controlled a vast amount of railroad property. The holding companies were being used to prevent the consolidation of railroads under the Commission plan, and to enable the companies to carry on financial activities that would not be approved nor could be regulated by the Commission. The amendments to Section 5 of the Interstate Commerce Act by the Emergency Railroad Transportation Act of 1933 have strengthened the authority of the Commission over railroad consolidations and have, by bringing holding companies that may have acquired railroad property under its jurisdiction, given the Commission much more power to regulate railroad finances generally. Now, it is necessary for all consolidations either of two or more railroad companies, or of control of railroad companies by a non-carrier, to be approved upon application to the Commission.

Notwithstanding the fact that the Commission has asked that it be remedied both in its report of 1937 and 1938, as

yet, no action has been taken on the matter by Congress. The Commission still has no jurisdiction over the financial workings of non-railroad subsidiaries of railroad companies. The present pending investigation of the New York, New Haven & Hartford Railroad has brought this point to the fore. In this case, the Commission has discovered that of the total losses reported, "by far the greater part had their inception in expenditures for purposes other than in construction, maintenance or physical operation of the New Haven Railroad". The fact that 97% of the investments were for non-railroad projects "is of little solace to the present security holders...." "The drain on the New Haven because of these investments has been a continued one."[46]

It is clear that the control of the Commission has worked toward the betterment of railroad finances as a whole. The majority of financial ills suffered by the railroads today come as a result of their activities prior to the restraining hand of the Commission, through the Transportation Act of 1920. Typical of the earlier manner of the railroad operators is the statement found in the case of the St. Louis-San Francisco Railway and Chicago, Rock Island & Pacific Railway. "This proceeding shows the easy manner in which the directors of this railroad bore their responsibilities as such. Questions of large financial importance to the properties and to the stockholders to whom they stood in fiduciary relation were decided by a few of the members in casual conversation. Large sums were expended or obligated on projects, which, as a board,

they had not considered and which, on the transactions being reported to them later, they readily ratified".[47] While it is quite impossible to do anything about the financial activities of the railroads prior to 1913, it is imperative that the Commission be granted all necessary power over the carriers to see that no further financial wrongs are committed. It is not necessary that the Commission place a heavy regulatory hand upon the carriers, but it is necessary that they continue to act as a restraining influence in order to prevent the "evil which results, first to the investing public, and, finally, to the general public", and which "cannot be corrected after the evil has taken place".[48]

FOOTNOTES

1. 41 Statute at Law 456, (Transportation Act of 1920).
2. F. H. Spearman, Strategy of Great Railroads, p. 115-126.
3. Interstate Commerce Commission, 41st Annual Report, p. 17-18.
4. Interstate Commerce Commission, 43rd Annual Report, p. 21.
5. Interstate Commerce Commission, Finance Reports, vol. 187, p. 598-602.
6. Interstate Commerce Commission, 41st Annual Report, p.39-40.
7. Interstate Commerce Commission, Annual Reports, 50th, p. 35; 51st, p. 39; 52nd, p. 53.
8. 41 Statute at Law 456.
9. 71 Interstate Commerce Commission 609.
10. 76 Interstate Commerce Commission 801.
11. Interstate Commerce Commission, 50th Annual Report, p. 163.
12. Interstate Commerce Commission, 52nd Annual Report, p.53; p.168.
13. Interstate Commerce Commission, 48th Annual Report, p. 21.
14. Interstate Commerce Commission, 52nd Annual Report, p. 54.
15. C. B. Aitchison, Interstate Commerce Acts Annotated, vol. IV, p. 3123.
16. F. H. Dixon, Railroads and Government, p. 174-176.
17. Aitchison, Interstate Commerce, vol. I, p.80-82.
18. I. L. Sharfman, The American Railroad Problem, p. 200-291.
19. Ibid., p. 453-457.
20. S. T. Daggert, Principles of Inland Transportation, p. 560-561.
21. Aitchison, Interstate Commerce, vol. I, p. 63.
22. Ibid., vol VI, p. 4508.
23. Sharfman, op. cit., p. 422-430.
24. Aitchison, op. cit., vol IV, p. 3123.

25. Dixon, op. cit., p. 296.

26. Sharfman, op. cit., p. 283-292.

27. Aitchison, op. cit., vol. IV, p. 2692.

28. Aitchison, op. cit., vol. III, p. 2224.

29. Ibid., vol. IV, p. 3480.

30. Ibid., vol. VII, p. 5967.

31. Daggert, op. cit., p. 303-304.

32. Aitchison, op. cit., vol. IV, p. 2619.

33. Interstate Commerce Commission, Acts Supplementary to the Interstate Commerce Act, p. 1-29.

34. Ibid., insert facing page 14 and page 16.

35. Aitchison, op. cit., vol. VII, p. 6273.

36. I. C. C., 51st Annual Report, p. 40-41.

37. I. C. C., 52nd Annual Report, p. 54-56.

38. I. C. C., Acts Supplementary, p. 42-47.

39. I. C. C., 51st Annual Report, p. 44-45.

40. I. C. C., 52nd Annual Report, p. 57-58.

41. I. C. C., Acts Supplementary, p. 47-51.

42. I. C. C., 47th Annual Report, p. 14-16.

43. Aitchison, op. cit., vol. III, p. 1392.

44. Ibid., vol. VI, p. 4531.

45. Ibid., vol. II, p. 1359; vol. VI, p. 4449-4450, 5172.

46. I. C. C., 51st Annual Report, p. 21-23.

47. 186 Interstate Commerce Commission 137.

48. I. C. C., 51st Annual Report, p. 22-24.

CHAPTER V

RAILROAD CONSOLIDATION

The United States is covered with efficient and adequate systems of transportation by rail built at the hands of private capital. These lines were started and were developed, for the most part, as independent and competitive organizations. During the past century, hundreds of railroad companies came into being and built railroads, some long, some short. In the normal course of events the larger systems became even larger by the action of bringing their weaker and less strong brothers into combinations, although the total number of rail lines still remained large. Early in the 20th century the railroads of the United States were owned by nearly 2,500 companies, of which fully 1,000 were operating companies.[1] In recent years this number has been steadily dwindling. In 1933, 1,262 steam railway companies reported to the Interstate Commerce Commission, of which 155 were Class I lines, or lines grossing $1,000,000 or more annually. Of the remainder there were 227 Class II lines with average annual gross revenues of between $100,000 and $1,000,000, and 291 Class III with revenues of under $100,000.[2]

In recent years, the number of rail lines has steadily dwindled. This has been caused not only by consolidation and amalgamation, but also because numerous short and branch lines have been abandoned due to changing industrial location and the development of strong highway competition. At the end of

1938, the President's Report stated that there were only 775 steam railway companies reporting to the Interstate Commerce Commission. Of this number, 136 were Class I lines, 193 were Class II, 239 were Class III and 207 were switching and terminal companies.[3]

Statements of total numbers of railroad companies may be misleading insofar as many of them have very close intercorporate relations with other systems. Especially is this true of the 136 Class I which are grouped together in a relatively small number of well known large railroad systems such as the Pennsylvania, the New York Central, the Great Northern, the Southern Pacific, the Sante Fe, the Northern Pacific, and a few other equally large lines. Rail line consolidation went on apace throughout the decade prior to the depression.[4] With a returning prosperity and with the Government regulation of non-rail carriers, rail consolidation will be renewed.

During the eighteenth century, every effort was made to further inter-railway competition, and law was invoked in order to prevent the companies entering into rate agreements, or the pooling of earnings or traffic resulting therefrom. The Government was still operating under the laissez-faire theory, and it felt that free competition was much to be desired and that monopoly must be prevented. Eventually, the discrimination and rate wars resulting from this unregulated rivalry were recognized in the light of their harmfulness, and attempts then began to be made by the state and Federal

Government in an effort to prevent this unfair practice. However, the Government continued to assure the continuance of competition and to prevent its limitation by joint action of the carriers. The carriers were prohibited from engaging in service and rate making practice certain to result from the enforced competition of isolated railroad companies. They were to adopt and maintain rates and services that were reasonable and were not discriminatory.[5]

The nature of inter-railway competition and the inevitable end wherein it leads to destructive rate wars and discriminations injurious to the public were long misunderstood by the Government. This was so much so, that the policy of enforcing competition, instead of attempting to further the cooperative action of competing lines under Government regulation, was continued right up to the World War and Government control.[6] Only then was the advantage of railroad consolidation and cooperation realized. This discovery led to the inclusion of a new policy in the Transportation Act of 1920 which permitted the pooling of railroad traffic and earnings, and which provided for the consolidation of railroads into a limited number of equally strong nature. Pooling operations and consolidation were made subject to the Interstate Commerce Commission. This body was enabled to prescribe the rules of procedure and also see to their enforcement.[7]

The present policy is almost the direct antithesis of the Congressional legislation of 1887, which set up the Interstate

Commerce Commission. Here, the law was set up in order to prevent the railroads from consolidating with each other. The railroads were more far-sighted and practical than was the Government of that time, for they had been entering into pooling arrangements and had been setting up rate and traffic associations since 1870. They did this in an attempt to do away with the unbridled inter-railway competition which is always inherent in free competition. However, this cooperation was ended by the anti-pooling provisions of the Act of 1887.[8]

Except for the period of Government operation from December, 1917 to March, 1920, Congress adhered strictly to the policy of seeking to enforce railroad competition by statute, preventing railroads from concerted action in making competitive rates and combinations for consolidated or affiliated systems.[9] During the period of Government operation it was brought home to Congress that railroad cooperation, and even consolidation, might be advantageous in spite of its effect upon inter-railway competition. Attempts to consolidate and unify the railroads were further forwarded by the condition of some of the lines which were weak financially, but strong in the dependence of the public upon them for adequate and efficient railroad transportation. Congress was thus spurred to put all railroads upon a stable basis. It was in the attempted fulfilment of this hope that weaker lines were consolidated with the stronger ones, and plans for consolidating all the railroads into a limited number of systems were

incorporated in the Transportation Act of 1920.[10]

During the period of Government control there was attempt at consolidation of proprietary interest. However, for purposes of expediency the operation of the railroads was carried on in seven regions. The seven regions were the Eastern, Allegheny, Pocahontas, Southern, Northwestern, Central Western, and Southwestern. Each region had a director who reported to the Director-General of the Railroads and his staff of divisional directors in Washington. The railroads in each of the divisions were operated by their officers subject to the control of the regional directors and their staffs who carried out the policy determined by the Director-General and the heads of the several divisions with offices in Washington. Within each region and in relation to each other there was a large measure of cooperation in services and the use of facilities. Coal and other traffic was zoned in each of the regions in order to eliminate unnecessary haulage. Each railroad was used for that service for which it was best fitted to perform according to location and equipment. Joint use of terminal facilities was extensively performed, and joint ticket offices in large cities took the place of ticket offices operated by separate lines.[11]

Due to the complete control of the Government over the railroads, it was possible for it to accomplish as much as if it had been the owner of the properties used. Zoning of traffic and administrative management were carried out by

means of a country-wide unification of railways that was subdivided for operation into seven groups, each group composing the railroads in a territory having a fairly distinct economic and industrial traffic. Although the Government operated the railroads as a means of expediting the prosecution of the War, its policy, and the experience gained in the carrying out of its policy, was an instructive experiment in railroad consolidation. This experiment brought about the substitution of a statute permitting and encouraging railroad consolidation in place of the prohibitory statutes that had previously been in force.[12]

The new legal policy was voiced in Section 5 of the Interstate Commerce Act. This new section, which had merely prohibited railroad pooling prior to its amendment by the Transportation Act of 1920, was now changed so as to permit pooling agreements to be entered when permitted by the Interstate Commerce Commission. It was also extended as to railroad consolidations and mergers and the manner in which they too could be carried forth under Interstate Commerce Commission control and approval. These provisions now permitted a railroad company to gain control over another railroad, with the approval of the Commission, by lease or purchase of stock. However, the statute would not allow the consolidation resulting from this move to go so far as to effect the consolidation of these carriers into a single system for ownership and operation.[13]

The Commission was further instructed to plan a system whereby the railroads of the country could be consolidated

nto a limited number of strong systems. However, it was urther provided that competition should be preserved as ully as possible and, wherever practicable, the existing outes and channels of trade were to be preserved. So far s these requirements permitted, the consolidations resulting ere to be such that the costs of transportation as between ompeting systems should be the same; and such that the systems ay have uniform rates and earn the same rate of return upon heir respective properties. This last provision was more n the nature of a legislative hope than an actuality. The ommission was further instructed to hold public hearings egarding its plans of consolidation. Upon receiving full estimony from all interested parties, the Commission was to dopt a plan of consolidation in which it would be possible o make changes that might later prove to the public interest.[14]

Having adopted a plan of consolidation, two or more railoads would then be permitted to consolidate under Commission urisdiction providing for compliance with the following provisions; The consolidation must be in line with the Commission's lan and must have the Commission's approval. The capital of he consolidated properties must not exceed the value of the onsolidated properties as determined by the Commission. When he carriers apply to the Commission for approval to consolidte, the governor of the state in which the carriers operate hall be notified by the Commission, and public hearings are to be held, following which the Commission was authorized to

issue a statement approving or disapproving of the proposed consolidation. Should the consolidation be approved by the Commission, the consolidation was to be effected, the laws of the state or the decision of any state body to the contrary notwithstanding.[15] When the carriers effect a consolidation, they are to be freed from the provisions of the anti-trust laws that might be violated as a result.[16]

The Commission set about preparing a plan for the proposed consolidation at once. To better carry out this plan, it employed Professor Ripley to make an investigation and a plan for the Commission to consider. After a year's study, Professor Ripley offered a plan in 1921. This plan would divide the railroads into 22 groups, 19 of which were to be built around railroad systems, and three regional groups, the New England, the Michigan Peninsula and the Florida East Coast Groups. The Commission modified Professor Ripley's plan by minimizing the breaking up of existing lines and systems and by alloting the railroads in northern New England to the New York Central Railroad and by assigning the New York, New Haven and Hartford to the Baltimore and Ohio. The Commission's plan was offered in 1921, whereupon extensive hearings were carried on which lasted over a period of two years. After the hearings were over in 1923, it was expected that a definite plan would be offered by the Commission in 1924.[17]

As originally planned, the theory behind the consolidation principles of the Transportation Act of 1920 were such that it was believed that the companies affected would proceed in

the process of consolidation under the outlines laid down by the Commission. It was believed by Congress that the railroads desired consolidation, and that they would carry on this practice by themselves once the way had been cleared.[18] The Transportation Act of 1920 did not accomplish what was expected of it. The rivalry between the strong railroads was so great that instead of cooperating in the carrying out of the plans, they attempted to checkmate each other wherever possible in order to prevent their apparent competitors from becoming too powerful. Furthermore, the smaller companies further disrupted the plan by setting extremely high valuations upon their property, to be paid by the company with which they were to merge. The stronger railroads were interested in combining with other strong railroads and were not at all interested in taking over the so-called "weak-sister" lines, which the Government desired to have continue in operation through the benefit of the strong roads for the public interest. The strong railroads did not care to take over lines that would not add materially to their net worth and which would not contribute to the net earnings.[19]

Realizing that the proposed consolidation could not be accomplished because of the disposition of the carriers, the Commission did not propose a plan of consolidation in 1924 or 1925. Instead, it addressed a letter to the Chairman of the Senate Committee on Interstate and Foreign Commerce in which the majority of the Commission expressed doubts as to the

wisdom of the law requiring the Commission to adopt a plan to which all future consolidations must conform. The Commission further requested that it be relieved of conforming with Section 5 of the Interstate Commerce Act which required that it adopt a complete plan of consolidation, the while making it unlawful for any consolidation of railroads to take place without the approval of the Interstate Commerce Commission.[20] The proposed amendment would have given the Commission control over consolidations and would have given the Commission the right to make changes and additions to consolidations in order to include weak lines, where necessary in the public interest. Although hearings were held in the Senate and in the House of Representatives regarding the Commissions suggested amendment, no action was taken, despite the fact that the Commission repeated its proposals in the 1926, 1927 and 1928 Annual Reports.

Since Section 5 of the Interstate Commerce Act was never amended, the Commission felt obliged to carry out the mandate of the statute in 1929. Under this plan, the railroads were to be consolidated into 19 systems. The 19 systems provided for in the Commission's new plan included the Boston and Maine for northern New England, the New Haven for southern New England, five systems for the eastern trunk line division which were to include the New York Central, the Pennsylvania, the Baltimore and Ohio, the Chesapeake and Ohio-Nickel Plate, and the Wabash Seaboard Air Line. The south was to have two systems consist-

ing of the Southern and the Atlantic Coast Line. The balance of the country was to be covered by the Illinois Central, the Union Pacific, the Chicago and Northwestern, the Great Northern Pacific, the Burlington, the Chicago, Milwaukee and St. Paul, the Sante Fe, the Southern Pacific, the Rock Island-Frisco and the Missouri Pacific. The lines owned by the Canadian National and the Canadian Pacific were to be left intact. Should any further changes be found that would be in the public interest, the Commission reserved the right to carry them out.[21]

The plan met with much opposition since neither the carriers, nor the cities and centers of population were in agreement as to the exact grouping of any of the railroads. Especially dissatisfied were the great eastern trunk line railroads. The Pennsylvania was particularly dissatisfied because the Commission's plan would have defeated certain strategic moves it had made in securing a controlling interest in certain key lines desired by other carriers. The establishment of a fifth trunk line in the Wabash-Seaboard Air Line combination and the railroads alloted to it under the plan were violently objected to by the carriers concerned. The New York Central was dissatisfied because neither the Lehigh Valley nor the Delaware, Lackawanna and Western had been alloted to it, whereas it had been given the Virginian Railway, which it did not particularly desire. Furthermore, the Pennsylvania was to become dissociated from the profitable Norfolk and Western which along with the Wabash and other roads was to form an

additional competitor in the Pennsylvania's territory. The Western Maryland was to be taken from the Baltimore and Ohio and the Wheeling and Lake Erie was to be cut from the Chesapeake and Ohio-Nickel Plate combination. [22]

The tempest stirred up by the Commission's proposal finally resulted in a conference of the carriers in order to work out some plan mutually satisfactory in trunk-line territory. The railroads worked out a plan whereby there would be four instead of five lines in trunk-line territory and a plan that would allot the railroads to systems in such manner as to cause the least objection possible on the part of the interested parties. Although it was not easy for the negotiators to come to an acceptable agreement as their interests conflicted in many instances, they were finally able to work out a plan satisfactory to the trunk-line railroads.[23] By this plan, the objectionable fifth trunk-line in the form of the Wabash-Seaboard Air Line was eliminated and plans were worked out that would enable the four trunk-lines to control railroads that it already controlled or that it considered it ought to control in the future. The New York Central gained the much coveted Lackawanna;; the Pennsylvania was left in control of the Wabash and the Norfolk and Western; the Baltimore and Ohio retained the Western Maryland and was given the Lehigh and Hudson River for New England and the Ann Arbor which would carry its lines up through Michigan; the Chesapeake and Ohio-Nickel Plate combination was assigned the Lehigh Valley, instead of the Lackawanna, and also

the Wheeling and Lake Erie.[24] This plan was submitted to the Commission. After some hearings and a few slight changes, the Commission approved the plan in July, 1932.[25]

A further change in the 1929 plan of consolidation was in the permitting of the Southern Pacific to acquire control of the St. Louis and Southwestern. This railroad had originally been assigned to the proposed Illinois Central group.[26] In February, 1930, the Commission took action upon a petition filed by the Great Northern and the Northern Pacific asking permission for the leasing of these two lines to a new operating company to be known as the Great Northern Pacific. Since the Burlington would have been affected by the proposed lease insofar as it is jointly owned by stock ownership on the part of the Great Northern and the Northern Pacific, the Commission stipulated that the Burlington was to be released from this new company and from control by the two railroads within a reasonable length of time, the shorter the better.[27] Since neither the Great Northern nor the Northern Pacific found the Commission's plan acceptable, no further action was taken.

Following the plan of 1929, no further mergers took place under the laws of the Transportation Act of 1920. The Commission was not eager for the job assigned it by the Act of 1920, insofar as consolidation plans were concerned, and held from proposals along these lines for many years, hoping that Congress would relieve it from this duty. Strangely enough, although very desirous of merging before the War, when it was

unlawful, the carriers became apathetic when it was made lawful for them to merge. After the carriers did work out a plan for consolidation, it became impossible for them to carry it out, as a result of their financial condition following the crash of 1929 and because of the severe compeition afforded by the non-regulated motor carriers.[28] Public opinion also changed to a certain degree. When the carriers' plan was approved in 1932, no further cooperative action was taken by them. In 1930, a resolution which had already passed the House was presented to the Senate. Had this resolution been adopted, it would have suspended the Commission's power to approve of consolidations for a period and would have provided more stringent requirements for the carriers and for the Commission as regards the formation and approval of all mergers.[29] Just what was behind this move is not known. However, it is conceivable that it was furthered by the labor interests who were afraid that mergers and consolidations might come about more rapidly as a result of the depression, thus precipitating more railroad men from their jobs.

Although a general merging of the railroads has not taken place, as planned in the Transportation Act of 1920, many roads have passed under the control and ownership of other lines by means of lease or purchase, with the approval of the Interstate Commerce Commission.[30] Up to the end of 1936, the Commission had received 467 applications from the carriers for permission to gain control of one line by another through purchase of

stock, lease or the operation of one carrier's property by another. Of these applications, 448 had been approved, affecting a total of 81,000 miles of line. During 1937, 36 applications were granted affecting 2,446 miles of line, and in 1938, 21 applications affecting 4,343 miles of line were granted.[31] The largest acquisition in 1938 was the New York, Chicago and St. Louis and the Erie Railroad Companies, consisting of 2,775 miles of line, acquired through stock purchases by the Chesapeake and Ohio Railroad Company.[32]

Section 5 of the Interstate Commerce Act was amended by the Emergency Railroad Transportation Act of 1933. The new amendments gave the Commission control over the acquisition and consolidation of railroads by non-railroad companies, as well as changing the procedure to be followed by the Commission and by the carriers in carrying out consolidation by means of lease, or purchase of one railroad by another.[33]

It is clear that Congress had four aims in mind when it enacted the Emergency Railroad Transportation Act of 1933. The first of these aims was to assist the carriers in effecting certain economies in operation and management by providing the machinery through the temporary office of Federal Coordinator of Transport. The other three purposes of the Act were to provide for Government regulation of railroad holding companies through amendment to Section 5 of the Interstate Commerce Act, to adopt a new schedule for railroad rate making by amending Section 15a and repealing the recapture clause

of the Interstate Commerce Act and to simplify the process of valuation of railroads, by the Interstate Commerce Commission.[34]

Section 5 of the Interstate Commerce Act, in the form provided by the Act of 1933, contains paragraphs providing for the prohibition of railway pooling except when authorized by the Interstate Commerce Commission, and the following paragraphs provide for the Commission to prepare and publish a plan of consolidation of the railroads of the United States into a limited number of systems, the plan to be subject to such modifications as are in the public interest. The Section further goes on to provide that two or more companies may combine, in any manner, or may combine for operation under a third non-railway company, providing they have the approval of the Commission.[35]

Paragraph 4, Sub-Division b, of Section 5 sets forth the procedure to be utilized by the Commission in deciding upon an application for approval of a proposed consolidation. It further provides that the Commission may grant the application, but subject to such terms and conditions as shall be just and reasonable and in the public interest.[36] The consolidations must conform with the Commission's proposed plan as established by paragraph 3 of Section 5 of the Act. This clause of the Act places a limitation upon railroad consolidation and mergers by the voluntary action of carriers in proposing an individual consolidation to be approved upon its own merits and not

primarily with regard to its relations to a general plan of railroad grouping that has been prepared by the Commission.[37] The effect of this clause upon future railroad consolidation will depend upon the Commission's willingness to modify the detail of its general plan of railroad grouping, as modification is needed, when the approval of the consolidation of a group of railroads needs that modification. The Commission has already approved of some consolidations that were not within the scheme of its plan as laid down in 1929.[38]

Paragraph 5 of the Act of 1933 provides that non-railway carriers become subject to the jurisdiction of the Interstate Commerce Commission when they secure control of two or more operating railroad companies. This control of the Commission extends through the keeping of accounts, the making of reports, the issuance of securities, and the assumption of liabilities on the part of the new company. If a company attempts to gain control of railroad companies by means of common directorates, officers or stockholders, the holdings of investment companies or trusts, or of voting trusts, this paragraph makes such action unlawful.[39]

Paragraph 6 also states that control or management should be "construed to mean the power to exercise control or management". The succeeding paragraphs carefully describe what shall be considered the power to exercise control or management. The Commission is further authorized to act upon its own initiative or upon complaint to investigate and determine whether any person is violating the provisions of paragraph 6.[40]

In paragraph 11, we find provisions that help the Commission to deal effectively with the holding company situation that had developed prior to the enactment of the law, by authorizing the Commission upon complaint or upon its own initiative to investigate whether holdings upon the part of any person or company has the effect of subjecting such carrier to the control of another carrier, group of carriers, or persons. If the Commission investigates and finds that there is a control being exerted, without its authority, and that this control is inhibiting the free operation of the controlled carrier, the Commission is authorized to take whatever steps are necessary to break the control.[41]

The Act of 1933 also provides that any carrier or corporation affected by the orders of the Commission in accordance with provisions of this statute shall be relieved of responsibility to anti-trust laws and other restraints placed either by the Federal or state governments. This is a continuation of a provision contained in Section 5 of the Transportation Act of 1920, and it is a necessary part of a law substituting government regulation for statutory prohbition of a railroad consolidation.[42]

The Emergency Transportation Act of 1933 does away with the distinction which formerly existed concerning stock ownership by one company of another and a merger of two lines into a third company, as far as consolidation is concerned. The

Act of 1933 provides that the Commission is to apply the same test, in both instances, for determining whether approval or disapproval is to be voiced as far as the proposed consolidation is concerned.[43] This has been a wise provision, and it has gone a long way toward the simplification of administration as well as to contribute to the adequacy and efficiency of Government administration and regulation of general railroad consolidation.

However, the major contribution to Section 5 of the Interstate Commerce Act, by the Act of 1933, has been in the realms of subjecting railroad holding companies to the jurisdiction of the Interstate Commerce Commission.[44] That there was need of such legislation can be found in the fact that private individuals as well as railroad companies were making use of this device to gain control of railroads. The purpose of the railroad companies in using this device was found in the fact that they were attempting to build up a stronger or more integrated system in order to place themselves in a better and more strategic position, as far as rival companies were concerned.[45] The use of this device, upon the part of individuals was to be able to gain control of railroad companies by means of a small investment at the top. The securities of railroad companies were regulated, while those of the holding company remained regulation free. Thus, it was possible for railroads to gain control of other railroads by means of a controlling stock interest through a holding company, without having to gain

Government approval of the financial operations connected therewith. Speculative interests found that the railroads as well as industrial enterprises offered great opportunity for creating combinations, profitable to the promoters, with funds secured from the sale of stocks and bonds to the public, such transactions being carried on without any hindrance from the Government as far as these financial operations were concerned.[46]

The shortcomings of Section 5 of the Act of 1920 in accomplishing the general aims of railroad consolidation, and the inadequacy of Government regulation of the means and agencies by which individual consolidations were being formulated contrary to the spirit and aim of the Act of 1920 had become increasingly manifest long before the enactment of the Emergency Transportation Act of 1933. As early as 1928, in one of its Annual Reports, the Commission recommended that several changes be made in Section 5. Among others, they proposed that it be made "unlawful for any consolidation or acquisition of the control of one carrier by another in any manner whatsoever to take place, except with our specific approval and authorization".[47] During 1929 holding companies became increasingly active in securing control of railroad companies, and the Commission was sufficiently impressed with the growing importance of the question to urge Congress to act upon the situation. In its Annual Report for 1929, the Commission called attention to the fact and reiterated its stand of the previous year as far as

holding companies were concerned. Specific reference was made to such companies as the Allegheny Corporation, controlled by the Van Swerrigens, and the Pennroad Corporation, controlled by the Pennsylvania Railroad, to bring several railroads under the control of the same interests. The Commission also called attention to various devices utilized by the holding companies to allow a large measure of control to be exerted by a relatively small investment through the use of limitation of voting power by certain classes of stock, the pyramiding of one holding company upon the other, and the like. The Commission again called upon Congress to investigate the situation and enact appropriate legislation.[48]

The House of Representatives started to take action upon the Commission's recommendations. It authorized the Committee on Interstate and Foreign Commerce to investigate the railroad holding company situation and to make a report with recommendations for legislation. The Committee employed, as special counsel, Mr. Walter Splawn, who in turn was aided by a staff of lawyers, accountants and a statistician. The Committee obtained detailed information about stock ownership in rairoads by railroad companies, holding companies, investment trusts, individuals and associations. The culmination of this body's research was in the publication of a three volume report.[49] In the report to the Committee Mr. Splawn recommended that the Interstate Commerce Commission be given the authority to approve or disapprove the acquisition of the

control of a railroad which would result in bringing that road in affiliation with, under the control of, or under the management of another railroad, whether that acquisition be by holding company or otherwise. He also recommended that the Committee consider whether or not legislation is necessary to deal with any past acquisitions of railway property.[50] These provisions were later embodied in the amendments to Section 5 of the Interstate Commerce Act, as they were set forth in the Emergency Transportation Act of 1933.[51]

The Interstate Commerce Commission concurred in its beliefs, with those of Mr. Splawn in its Annual Report for 1931.[52] In 1932, the Commission submitted the draft of a bill to Congress calling for Commission supervision over every "legitimate and desirable method of combining railroad properties". By the end of that year, when the Annual Report of the Commission was published for 1932, the Commission had placed special emphasis upon the regulation of holding companies because of the importance of protecting investors. When the Commission first recommended regulation of railroad consolidation and holding companies, the main purpose was to prevent evasion or defeat of the consolidation plans as set forth in the Act of 1920, which was designed to subject the unification of the railroads to the orderly process of a publicly planned scheme of railroad consolidation under public regulation. The Commission went on to state that recent events had brought the need of regulation of railroad holding companies, not wholly in the

interests of consolidation, but more for the protection of the investor.[53]

In furthering the ends of railroad consolidation, Congress has been looking toward the public welfare. It is felt that the substitution of a constant Government regulation of the carriers would result in more economy than the costly and inefficient inter-carrier competition of the past. It is clear that the public does not want to see the end of railroad competition, because it believes that competition of railroads with each other and with other forms of transportation is desirable. However, it is also felt that the competition which is allowed to continue should be kept within bounds by the Government and should be of the type that will not weaken the competitors, but will rather give them the inventive to strengthen their facilities and services.[54]

Congress has also carried on its policy of railroad consolidation in order to strengthen the railroads as to coordination and services, to cut down empty car mileage, to cut unnecessary duplication of facilities and services, and to lessen circuitous routing of traffic, in an attempt to give the public a better type of rail service and to effect economies in the rail industry in order to enable them to give better service. Both by the Transportation Act of 1920 and the Emergency Railroad Transportation Act of 1933, the Commission has been commissioned to approve of consolidations when they are in the public interest. It is hardly conceivable that

this would be possible of attainment if the Commission did not also attempt to increase economy and efficiency of the railroad carriers as a means to that end.[55]

When the Transportation Act of 1920 was passed, Congress attempted to end the era of enforced railroad competition and bring the weak roads into consolidation with the larger roads in order to enable all parts of the country to have financially strong and efficient railroad service. It was in this manner that Congress hoped to solve the pressing problem of the "weak sister" railroads. However, the plan never worked out to full satisfaction. The planned strong consolidations have never combined, and when roads did combine, the tendency was to combine the strong roads and leave the weak roads of the territory out of the consolidation. In order to counteract this tendency, the Interstate Commerce Commission has stipulated that certain short roads be included in the proposed consolidation, before official sanction would be granted. When the four trunk-line system was proposed in 1932, the Commission took care that the proposed consolidations included secondary as well as first class roads.[56] It is to the interests of the country that as many needed railroads be kept in operation as is possible. In an attempt to combine the weak with the strong, this end will be nearer attainment. The railroads are a necessary part of the transportation system of the country, as no other means of transportation has yet been found which can cope with it for cheapness and

efficiency of transportation on land.

There are many plans for the consolidation of the railroads in the United States, all of which depend on the Government's future attitude toward ownership and control. It rests with whether the Government is content to allow consolidations to take place under private means, with supervision from the Government, or whether future consolidation will be compulsory along the lines of a prearranged scheme laid down by the Government. A further question arises in the method of effecting the proposed consolidation. It must be decided whether the roads are to be combined with a few large systems, such as the New York Central, the Pennsylvania, the Northern Pacific, or the like, or whether the country is to be subdivided into a number of sections, and all the roads in that section are to be assigned to one company. Of course, the other alternate would be one of complete government ownership and operation of the railroads, such as is practiced in many foreign countries.

Much attention has been directed toward the plan which has been in force in England since 1921. There, the railroads were consolidated into four regional, overlapping systems. However, before attempting to compare the United States and England, it is well to realize that the area of England, Scotland and Wales is 88,745 square miles as opposed to 3,026,789 square miles in continental United States. Furthermore, there are about 12 miles of railroad mainline in the United

States to every mile in the United Kingdom.[57] Under the British constitutional system, it was possible for Parliament to accomplish this consolidation without the fundamental difficulties which would lie in the path of a similar move in the United States. Even so, many obstacles arose in the system requiring much time to overcome. The task would be far harder here than in England. After "amalgamation" in England, much competition still remained between the various systems, and to eliminate this, coordination was brought into play. With the consent of the Government, pooling operations were entered into in all areas of competition. This has been particularly true of the London area, where Parliament has lately consolidated and coordinated all manner of passenger transport under one operating body.[58]

The extreme possibility for the United States would be one of consolidating all the railroads of the country under one single system. This would render the question of coordination unnecessary. Another suggestion was that of the plan which would have placed all the roads of the United States in the hands of two nation-wide competing systems. The Prince Plan would have consolidated the roads into seven systems, two in the East, two in the South and three in the West. As in Great Britain, such a plan could be accompanied by coordination, in the form of pooling, with respect to competitive traffic. During his term of office, Mr. Eastman, as Federal Coordinator of Transport, proposed many plans in great detail, which laid

great stress upon coordination, leaving consolidation to the voluntary action of the railroads, subject to Interstate Commerce Commission supervision or compelling them in individual cases, as occasion might arise.[59]

All of these systems have their obvious merits, and disadvantages. Unquestionably, a system whereby all the railroads of the country would be consolidated under one head would eliminate the duplication and waste now characteristic of our railroads. However, it would mean that this system would have to be accompanied by compulsory legislation. It would be well nigh impossible to draft this legislation so that it would stand the test of court, and it would be still more difficult to carry it into effect. Once set up, such a monster might easily get beyond all control. Furthermore, it would take superhuman effort to be able to administer any such gigantic corporation efficiently. It would require many new and untried methods of organization to run this type of corporation. It must also be considered that the attention which good executives of compact railroad organizations give to their employees, patrons, and the details of management, may be worth as much, from the point of view of economy, as the savings made possible through great consolidations. Furthermore, savings on a large scale, over a large consolidation, imply heavy traffic over the best routes. Were this to happen, many communities now on main arteries of commerce would find

themselves located on secondary routes.

A similar objection might be raised against the Prince Plan which looks to the grouping of all the railroads into seven main systems. Many communities would be deprived of railroad competition, while other would have more than enough. Thus, the present uneven distribution of competition would be amplified, with the danger that population and industry would flow toward the more favoured spots.

Coordination, in preference to consolidation, would have a smaller tendency to concentrate management and disturb general competitive conditions. There are more chances that coordination plans could be worked out without resorting to compulsory legislation. Also, neither the Government nor the carriers would be confronted with embarrassing financial questions which are bound to arise in connection with any program of compulsory legislation.

It is clear that a plan of either consolidation or coordination is bound to be subject to criticism from many sides. The railroad people who favor any such move are only those persons who are officials in corporations that believe that they would survive the process without loss of position or prestige. The efforts of the railroad employees are all directed against any such move because they fear the loss of employment which would result from any move toward a lessening of duplication. Public opinion, as expressed by Congress, seems to be suspicious of moves in restraint of free competition. And, many towns

and cities fear consolidation or coordination because they are afraid that they might suffer as centers of railroad activity, should some such move take place.

The question arising, then, is simply what will the future course of Government be as far as railroad consolidation and competition are concerned. On September 20, 1938, the President was moved to appoint a committee to report and submit recommendations upon the general transportation situation. After studying the question throoughly, the Committee handed down a group of recommendations on December 23, 1938.[60] As there was a previous report handed down by a similar committee in March, 1938, to which the Interstate Commerce Commission in its report for 1938 stated, "The recommendations of the President's committee in respect to this matter in its report of last March are along generally sound lines", and since the latest Committee handed down much the same decisions, it is reasonable to suspect that the Commission would be constrained to back their findings also.[61]

With respect to coordination, the President's committee found that there are many examples of that being carried on by the railroads at the present time. They cited as an example of this, the universal practice of the joint use of equipment. They are of the opinion that the railway management of the future will continue to carry forward practices of coordination that are desirable and feasible from a practical point of view.

Coordination and pooling constitute a field purely in the realm of railway management, and as such, should not be made a Governmental matter.

The Committee felt that consolidation has contributed much toward economy and added improvement in service rendered. It felt that competition between railroads is becoming of less importance to the public, as other means of transportation grow. Thus, proper consolidations would be of great public benefit with the elimination of circuitous routing, thus increasing carrier earnings, without increasing rates to the public.

The Committee did not believe that the country was ready for any system of compulsory consolidation, preferring to allow individual railroad initiative to carry on for a while longer, the while relieving the railroads from some limitations and restrictions. The Committee would set up a Transportation Board which would approve all railroad consolidations. However, once approved, the consolidation would be free of all prohibitions and restrictions of State or Federal Laws, as is now provided by the Interstate Commerce Act with respect to approvals granted by the Interstate Commerce Commission.

The recommendations handed down with respect to railroad consolidation and coordination, by the President's committee, might be summed up in that there should be legislation repealing those portions of the Interstate Commerce Act which make the Commission responsible for a plan of railroad consolidation, and substitution should be made by which all initiative in such

matters be taken by the carriers themselves, under the proviso that they obtain the approval of a Transportation Board before the consolidation becomes lawfully effective. The approval is to carry with it the ability to require that the public interest be at all times considered, insofar as transportation is concerned; the authority to require consolidations to provide for weak railroads, by inclusion of said weak railroads in the consolidation plans; that the total fixed charges will not be raised by the consolidations; that the interests of the employees will not be adversely affected; and when the approval is granted, it is to carry with it relief from restraints and prohibitions of State and Federal Law.[62]

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CHAPTER VI

FREIGHT AND PASSENGER TRAFFIC RATES

No part of railroad management demands more attention than the development and maintenance of railroad freight and passenger traffic, for more than a billion tons of freight and five million passengers are carried each year by the railroads.[1] The efforts of each line are toward the diverting of traffic from other lines and methods of transportation to the home road in an attempt to retain and maintain existing traffic. In addition to this, attention is also devoted to developing new traffic and to rendering information that is of value to shippers, consignees, and travellers in choosing routes, in locating plants, and in efficient performance of production and marketing functions.

The manipulation of rates and charges is no longer permissible. Prior to the enactment of the Interstate Commerce Act in 1887 special rates and rebates were general. These devices were used to divert traffic from one line to the other, to build up new industries, and to help one shipper in preference to another in return for promised business.[2] Even after the Interstate Commerce Act became law these practices were engaged in to a limited extent. The clauses prohibiting rebating and discrimination tended to change the forms of the rebates and special rates from the obvious to the concealed. After the passage of the Elkins Act in 1903, traffic solicitation changed in character. That law, together with the

Hepburn Act of 1906 and later amendments to the Interstate Commerce Act, has eliminated the rebate and the special rate from traffic solicitation and rate-making.[3]

In general, the policy followed by the Federal Government for the correction of abuses proved to be a rather negative one. In 1910, this policy became less negatavistic and more positive when Congress gave the Interstate Commerce Commission the power to act upon its own motion in prescribing rates.[4] This policy was culminated by the passage of the Transportation Act of 1920. The Transportation Act made it the duty of the Commission to establish and adjust rates according to the transportation needs of the country and the necessity of enlarging the facilities in order to provide the people of the country with adequate and efficient transportation.[5]

The relation of the Government to railroad rates has been becoming stronger during the last two decades. This has been mainly because it was, and still is, the duty of the Government to see that railroad rates are fair to the persons, places and commodities served. However, in recent years Government relation has taken on another and two-fold purpose: to further and develop adequate, progressive, efficient, economical railroad transportation, and to bring about a relationship between railroads and other carriers that will further a national transportation system comprised of all classes of carriers, each one performing the service that it can most economically and efficiently render.[6] The latter goal has not yet been attained.

However, it represents the ultimate in a constructive policy of Government regulation of transportation.

Great progress has been made in the fields of rate fixing since the passage of the Interstate Commerce Act in 1887. Notwithstanding the progress made, several problems still confronted the Government when the railroads were taken over for operation by the public during the War. Before the War, rather than constructive, the power of the Commission was merely empirical and corrective of carrier rate practices. Congress still clung to the idea of enforced railroad competition as opposed to the present stand of coordination and competition subject to Commission regulation.[7] A further step was made when the Shreveport Rate Case was handed down, This case, in 1914, firmly set the bounds separating state from Federal control of rates.[8] The railroads still were free from Government control of their financial operations, despite the apparent inadequacy of state regulation concerning these details. A national transportation system was still in the realm of fancy. That idea was not brought home to the public until the Government found it necessary to unify the railroads under one control for military purposes. It was that action which prepared the way for the inclusion of several new principles and practices of Government regulation of railroad rates and services in the Transportation Act of 1920. In that manner the Government withdrew from the operation of the railroads and

set the conditions which were to be obeyed by their future operators.

One of the fundamental provisions of the Act of 1920 was that clause which gave the Interstate Commerce Commission the power to fix absolute or minimum rates, as well as the maximum rates that railroads might charge. In practice, the Commission was given the power to set all interstate rail traffic rates. While the railroads actually work out and file proposed tariffs, the Commission has power to say whether or not these railroad rates are to be permitted.[9]

The Commission also received increased power to regulate intrastate rates, as a result of the Act of 1920.[10] Following the rule of law laid down by the Shreveport Rate Cases, the Act of 1920 gave the Commission the right to impose its own rates upon intrastate rates ordinarily outside its jurisdiction, when the intrastate rates were found to conflict to the detriment of the interstate rates.[11] The Commission was further upheld in its decisions by the Wisconsin and New York Rate Cases decided in 1922.[12] The Court found that the power of the states over rates should be limited to the fixing of charges within the general level of interstate rates set by the Interstate Commerce Commission.

One feature of the Act of 1920 which proved to be ineffective was the "recapture clause". A fair return of 5½% was fixed by the statute. This amount was to be retained by the railroad and used as the carrier saw fit. All over this amount was to

be returned to the Government. The Government, in turn, was to utilize the sum accruing from this recapture to aid the so-called "weak-sister" roads.[13]

According to the original theory of the Transportation Act, it was felt that rates might be determined as a result of the value of the property utilized in performing the services. The fact that railroad rates must vary in sympathy with economic conditions was overlooked by the backers of the fair return theory. The Interstate Commerce Commission continued to fix and adjust rates, after the passage of the Act of 1920, much as it had before. In general, the Commission made adjustments that would be fair to the carriers and to the public at the time the decisions were handed down.

The recapture clause was ineffective, as was the rule of rate making. In no year, not even that of the prosperous 1930, was the average net income of the railroads as much as 5½% of the value of the property used in performing the services. The recapture clause proved to be a greater burden than good. Some railroads having earnings in excess of 6% during prosperous years might have little or no income during the poorer years. Some financially strong railroads did not have net earnings in excess of 6% at any time, and thus were not to contribute. Very little money was actually recaptured by the Government. When the fund was acquired, little use was made of it as the Government was required to charge a rate of 6% on loans from this fund. The carriers could borrow money privately at lower

rates of interest.[14] Although the clause was questioned in the Courts, the Government was upheld by the decision handed down in the Dayton-Goose Creek Railway Case.[15] The recapture clause was finally repealed by the Emergency Transportation Act of 1933.

A serious limitation was placed upon the discretion of the railroads in the fixing of competitive rates with the coastwise carriers, by an amendment to the Interstate Commerce Act of 1887 in the Act of 1920. This amendment limited the authority of the Commission to relieve the railroads from the limitations of the short-and-long-haul clause of the Interstate Commerce Act. The amendment provided that railroads were not to be permitted to make a greater charge than the service warranted. It furthermore stated that if a circuitous route is to be allowed to charge as low a rate as that charged by a more direct route, and if the circuitous route is to be allowed to charge higher rates to intermediate points, "the authority is not to include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct route between the competing points". This clause enabled the Commission to carry out its policy of not allowing carriers to discriminate unduly against intermediate points in order to meet the competition of carriers by water to more distant points. As a result, large amounts of traffic have been diverted to intercoastal carriers. This traffic might have been retained by the railroads, had they

been allowed more freedom in the determination of their rates.[16]

Several bills are now pending before Congress calling for a limitation of the long-and-short-haul clause. It would be wise to give the Commission more power in determining what rates the railroads might charge in order to meet the competition of the water carriers. However, the only real solution would be to give the Commission the power to regulate the rates of the carriers by water, as well as those of rail, and thus to establish and maintain a fair rate for both rail and water.

In 1933, in order to help the railroads, the Emergency Transportation Act was passed setting up the office of Coordinator of Transportation for one year. This office, subsequently extended to a third year, was set up to help the railroads reduce duplication and other practices that might impair railroad earnings. While the Coordinator did bring to light much information, the practical value of the office was slight, as far as economies were concerned, because of the ham-stringing effect of the labor provisions of the bill.[17]

The investigations of this office resulted in the passage of the Motor Carriers Act of 1935. In general, the Coordinator recommended the simplifying of freight classification and of the system of rates, in order to bring the cost of railroad transportation more into harmony with motor carriers.[18] The investigations of the Coordinator will have a profound effect upon the future legislation of Congress.

The two important phases of the Emergency Transportation Act of 1933, namely; the one providing for regulation of

railroad holding companies, and the one simplifying the method for fixing the valuation of railroads, have only a slight long run effect upon railroad rates. The most important part of the Act of 1933, as far as rates are concerned, may be found in the repeal of the recapture clause and the adoption of a brief, effective and flexible rule of rate making giving the Commission discretion in the fixing and adjusting of railroad charges.[19]

When a regulatory statute has been administered over a period of time, such as the Interstate Commerce Act of 1887 and its numerous supplements, a definite code of regulation is developed that gives the statute greater breadth and significance and makes its application more effective. The Commission has been growing in size and effectiveness. It has reached its present status through legislation and public necessity. Congress has seen fit to give the Commission greater powers. In 1935, Congress gave the Commission the right to regulate motor carriers.[20] By legislation pending before Congress at the present time, the power of the Commission would be increased even past its present position.

The making of freight rates depends upon the grouping of 5,000 kinds and 15,000 ratings of freight shipped over the railroads. Rates are for classes of traffic and not for individual commodities. After freight has been classified, schedules of class rates are constructed for each of the traffic centers of the United States. It is necessary to make special rates for certain types of freight, such as car-load shipments of ore, coal and grain. Those types of freight demand rates even

lower than that of the lowest commodity rate.[21]

There are three major classification areas in the United States, each in charge of a committee appointed by the carriers in that particular locale. These three classifications originated in the eighteen-eighties, and have been developing since. The difference in each portion of the United States, insofar as the natural resources and industries are concerned, is taken into account in the designing of the classifications, in order to give that section as much economic advantage as possible. Large quantities of freight move from one section of the country to another, and in so doing pass from one jurisdiction to another with a consequent varying of classification and rates. It then became apparent that some method would have to be devised that would unify the three classifications and meet the dissimilar economic and industrial conditions and requirements of different sections of the country by giving the same class of traffic different rates in the several sections of the country insofar as that was made necessary by the varying conditions prevailing in the eastern, southern, and western parts of the United States. Attempts were made to cause the railroads to formulate a policy of consolidated freight classification. However, all efforts proved to be of no avail as the obstacles found to the plan were too great. A consolidation of the three freight classifications meant changing the rating of many commodities and articles and a consequent readjustment of freight charges, a task made especially difficult

by the competition of the carriers with each other and by the rivalry of the producing and manufacturing centers in different parts of the country.[22]

A vigourous attempt was made to arrive at a solution in 1918 and 1919. As the railroads were being operated by the Government, it was thought that some plan might be inaugurated during this period that would not have been possible to have carried out by common action of the carriers. Consequently, the United States Railroad Administration worked out a plan and submitted it to the Interstate Commerce Commission for its approval. The Commission found it necessary to withhold its approval, after hearing the opponents of the plan, as the new classification would have raised the rates in the majority of new classifications.[23]

The efforts of the Railroad Administration were partly successful. The rules and regulations concerning the three types of classification were unified, and the three classifications were published in a single book. The unification of the rules and regulations and the publication of the three classifications in the "Consolidated Freight Classification" book have been of great benefit to shippers and carriers. As a result of the movement started by the Railroad Administration, a greater degree of uniformity in classification has been steadily evolved. A Freight Classification Committee has been active since 1918, and each year has published a list wherein

may be found less differences between the various classifications.[24]

The action taken by the three classification committees and the Consolidated Freight Classification Committee is subject to the authority of the Interstate Commerce Commission which has jurisdiction over freight classification and rates.[25]

The number of classes into which freight is grouped is different for each classification. The Official Classification has six classes, but there is an intermediate grouping in two places, making eight actual groups. The Southern Classification has twelve groups, and the Western has ten. All three classifications provide for rates that are higher than first class rates, such higher rates being multiples of first class.

In working out classifications since 1920, as authorized by the Act of 1920, the Interstate Commerce Commission has extended the scope and increased the rate groupings of each of the classifications without making formal changes in the major freight classifications. The effect of the action of the Commission was to apply class rates to a large number of items that had formerly rested in the ex-class, or commodity rate. It is very desirable that the largest number of commodities be brought under classification, and that the number of ex-class items be brought to a minimum. The Commission has done a valuable service in widening the scope of freight classifications and of rates based thereon.[26]

The Commission has devoted considerable time to the improving of freight classification and class rate structures of which the main features were determined by the industrial and transportation conditions found upon thorough investigation to be controlling in the several parts of the country. However, while the Commission has been doing this work, transportation conditions have been rapidly changing due to the motor truck carrying freight upon high grade public highways. It seems probable that in the face of this competition, existing railroad rate structure and freight classification will have to be changed, if not reconstructed. While the railroads were the sole land carriers of freight, except for very short hauls, the railroad freight classification and rate structure were adpated to the needs and demands of the shipper and the carrier. With the land transportation service divided between the railroads and the motor carrier, it is obvious that changes will have to be made in the services rendered by the railroads, and in the charges and structure of the rate systems.

Two factors are taken into consideration when classifying freight, the value of the service to the shipper and the cost of rendering the service to the railroad. This has resulted in widely differing classifications for commodities of which the weight, bulk and cost of transportation may be nearly the same, but one may have a high value and thus fall within the rate payable by goods in a high class, while the other commodity may be of low value per bulk and weight and thus bear a

rating applicable to low-grade freight. The motor carriers have classified some freight, but they mainly charge according to the cost of rendering the service.[27]

Some states have worked out a method of freight classification for motor carrier, but this is relatively ineffective as states have control over intrastate transport only. Some states have prescribed a special motor freight classification different from the rail freight classification. The practice of other states has been to integrate rail and motor freight classification. As the job of freight classification continues, more weight will be placed upon the cost of rendering the service, and less upon the value of the item transported. Eventually, a single freight classification will be worked out by the carriers, the states and the Federal authorities. When this is done, the two modes of transport will compete with each other on a more equitable basis. It is possible that this plan will be some years of attainment.

Governmental regulation of freight rates must take into account the factors controlling or affecting such changes when they are not regulated or determined by the Government. The Government may not ignore the operation of economic forces in controlling prices, whether they be the transportation services or the manufactured products of the country. This is true of public as well as private operation of the railroads. Even when the railroads are operated by the Government, the economic forces must be recognized if the goal of social welfareis to be

attained.

Railroad rates are determined by three factors, whether fixed by the carriers or by the Government. These three factors are the cost to the carriers for performing the service, the value of the service to the shippers, and the high or low value, per unit of weight and bulk, of the commodity transported.[28]

In the Emergency Railroad Transportation Act of 1933, a simplified rule of rate making directs the Interstate Commerce Commission to give due consideration to the effects of rates upon the movement of traffic. This is really a mandate to consider the value of commodities seeking transportation and the value of the service to shippers. The same rule requires that the Commission consider the need of revenues sufficient to enable the carriers to provide such service, that is, to fix rates that will in the aggregate yield revenues that are enough more than the cost of the service to enable the carriers to serve the public adequately and efficiently.[29]

In general and over a period of time, the minimum level of railroad rates must be sufficient to cover the cost of service as a whole. Some rates are temporarily fixed below that level. During a business depression, general economic depression may force railroad traffic, rates and revenue below the cost of service level, making necessary a schedule of rates far above the cost of service level during prosperity years.

The value of service fixes the upper level that may be charged for each possible shipment. Under normal business conditions, railroad rates will be fixed by the carriers in their competition with each other and with other forms of transport, and will be established by public authority, somewhere between the minimum of the cost of service and the maximum of the value of the service, the whole subject to the higher authority of the economic conditions and forces.

In the Act of 1920, the Interstate Commerce Commission was directed to adjust and fix rates so as to enable the carriers to earn a fair income upon the value of the property used in performing the service.[30] This could not easily be carried out as the Commission was forced to allow the roads to charge such rates as were reasonable under the changing economic conditions, and such rates as were feasible under the decreasing traffic intensified by inter-railway competition and other forms of carrier competition by road and water.

Cost of service as a basis for railroad rates has received much attention in discussion. If the rates of carriers by rail, highway and water were regulated in a like manner and with equal effectiveness, the influence of inter-carrier competition upon rates could be minimized, although nothing short of complete Government ownership of all forms of transport would entirely eliminate the competition of rival carriers as a factor regulating service charges. However, the exclusion or minimizing of competition as a factor affecting railroad

rates would remove one of the obstacles to making the cost of service the basis of charges.

In 1933, through Section 13 of the Emergency Transportation Act, the Coordinator of Transport was directed to investigate and recommend upon cost finding in rail transportation. A Cost Finding Section was organized by the Coordinator and put in charge of a cost accountant. The Section worked out a detailed plan and method by which expense was apportioned to service. Little use has been made of the information accruing from this investigation. However, the Coordinator intimated that the railroads could simplify their rate structure and meet the competition of the motor carriers if more emphasis were placed upon the cost of service. Mr. J. R. Turney, head of the Section of Transportation Service of the Coordinator's staff, stated in the Freight Traffic Report submitted to the Coordinator in 1935, that freight rates should be based solely upon cost of service.[31]

There are other complicating factors which minimize the possibility of using cost as the only determinant of the rate structure. However, the future of the rate structure will depend upon the cost of service idea to a considerable extent in order to bring about an equitable adjustment of railroad charges to those of carriers upon the highways whose freight classification and rates will be determined mainly by the cost of service rendered.

The Commission's control over railroad rates and charges

was made larger, more definite and its responsibility for devising a system of constructive freight rates that would meet the needs of the country was increased. As business conditions were favorable after thw World War, it was possible for the Commission to continue in its efforts of revising and standardizing railroad rate structures, an activity which it had carried on prior to the War. Investigations were carried on in each section of the country and appropriate rate structures were established in each locale. This activity continued until 1931, when the last structure was placed in effect in the Pacific north and southwest.[32]

The first problem confronting the Commission after the passage of the Transportation Act in 1920 was to raise the general rates and revenues of the carriers. This they did by raising all interstate and intrastate freight and passenger rates. The passenger rates were raised equally throughout the country, but the freight rates were raised by somewhat different percentages in each of the four rate making districts into which the country had been divided by the Commission. The right of the Commission to take precedence over the rates set up by the states was contested by the states, but the Commission was upheld in both the New York and Wisconsin cases tried in 1922.[53]

The problems arising from the administration of the rate provisions of the Act of 1920 soon made apparent to the Commission, carriers and shippers that some form of rate revision

was necessary to remove the unjust discriminations that existed in many parts of the country, and against many types of commodities. In 1922, the Commission began an investigation of interstate class rates throughout the country. Prolonged hearings finally resulted in two decisions being handed down by the Commission which established new classifications and rates within the Southern Classification and between the South and the Official Classification of the north; the interterritorial rates included partly water rates as well as all land routes.[34]

The Commission was still engaged in this investigation when the Hoch-Smith Resolution was passed through Congress in 1925. This new legislation called for a thorough investigation of the rates of all carriers subject to the jurisdiction of the Interstate Commerce Commission. By March, 1935, the Rate Structure Investigation was begun which lasted for several years and which covered class rates and numbrous commodity rates. The Commission was attempting to place all rates upon a just and equitable footing.[35]

In 1926, in its Annual Report, the Commission stated that it wished to accomplish, by the investigation, a path toward a simpler and more consistent rate structure than the one in effect. It also hoped to reduce the number of rate cases coming before it. In order to reduce these, it hoped to remove the cause, namely the discriminations of the old rates against certain localities and commodities. It hoped to carry out the Hoch-Smith Resolution with a view toward establishing proper

relations in rate levels between the various articles of commerce.[36]

The goal set for itself became even more difficult of attainment when the Commission found it necessary to revise rate structures in order to cope with the changing railroad status resulting from the business depression of 1929 and the increase of competition from the motor carriers of which the rates were only based on cost of service and subject to a very ineffectual regulation upon the part of the various states. The Commission tried not to be diverted from its five-fold platform of adjusting railroad rates and commodity classes to simpler forms, of minimizing unjust discrimination, of placing competing carriers upon a just and equitable basis with the railroads and of facilitating Government regulation of rates, in what it considered to be a temporary business depression.[37]

The Commission had found that it was impossible to attempt to remodel all rate structures and commodity classes by one swoop, as was contemplated by the Hoch-Smith Resolution. In its report for 1933 the Commission stated that the changes, as contemplated by the Hoch-Smith Resolution, could only be brought about through the usual medium of the hearing of complaints, or by investigations upon the Commission's own initiative, rather than by a general nation-wide investigation which would cause undue and ponderous maladjustments.[38] In 1934, the Commission and the Coordinator asked for the repeal of the

Hoch-Smith Resolution.[39] The fact that Congress did not repeal this resolution was of little importance, as the Commission was soon able to finish all the investigations required of it by that decree.

In carrying out a policy of standardizing freight rates the tendency of the regulatory bodies seems to be toward using distance of haul as a basis for fixing class and commodity rates. They would have a tapering scale diminishing as the length of haul decreases. The distant rate scale is not favored by all carriers and shippers, some preferring the old method of allowing the competition to determine the rate. This is true because intercarrier competition will give certain less favored lines more traffic and will give some producers and consumers more favorable rates than they would enjoy if standard distant scales were employed. It is further stated that distance rate scales would zone traffic, cutting shipment of produce to far markets and that it would react toward the detriment of railroads having a less direct line to a point than their competitors. As distance rate scales favor the cost of service concept, they are not favored by persons who believe that the rates should depend upon the value of service.

The weight of opinion seems to be swinging toward the theory of allowing the cost of service to determine the rate, and that distance will become of increasing importance. The Coordinator stated in a report issued in 1934, that the system

of rates that had developed, based upon cost of service as well as value of service, must now be changed as the railroads no longer have the practical monopoly that they had at the time of the development of this type of rate determination.[40] The competition that the railroads must meet is that of the motor trucks, whose tolls are based only upon consideration of cost of service. A shift of railroad rates more definitely to a cost basis will give railroads a better footing, as distance will assume a more controlling influence upon rate structure.

Another point that has arisen in connection with the rate regulation, on the part of the Government, is one concerning whether the rate structure should be separate and distinct for each of the several rate districts into which the United States is divided, or whether the same rate schedule should apply throughout the country. Mr. J. R. Turney, in his Freight Traffic Report stated that the different rate districts originally came as a result of the limits of the carriers operating in certain localities. As the scope of the carriers increased, these varying rate districts became more and more artificial as many carriers operate in two rate districts, and some in as many as four. Although the rate structures still reflect some of the local conditions in a few of the districts, the need for economic parity among territories, for the removal of market competition, for the removal of discrimination

against certain towns and cities and for simplicity points toward a uniform price schedule applying throughout the country.[41]

In the regulation of the railroad freight rates, on the part of the United States Government, there are certain factors which are inherent in the very nature of rate regulation, and there are certain other problems that have arisen as a result of changes in the economic condition of the country, and of the nature of railroad competition with other railroads and with motor carriers. The general problem confronting the country is one of placing charges on the right basis and of standardizing rate and class structures for the individual territories, or for the country as a whole, as further legislation may dictate. In addition to the major general problems, there are certain other problems of lesser importance, but of no less significance to the question as a whole.

As the cities along the eastern seaboard came to be connected with the Middle West, and with the section east of Buffalo, carrier competition became keen, and was heightened even more by trade rivalry among the cities. This rivalry became so destructive that many of the carriers found it necessary to enter agreements limiting and setting maximums and minimums for freight rates. By 1877, two features of the Eastern Trunk Line rates had come into being, the "percentage" rate system and the "eastern seaboard differentials". The rate between New York and Chicago was made the base rate, with the intervening

territory divided into irregularly concentric zones, the rates from points in each zone from and to New York being a percentage of the New York to Chicago rate. Rates between New York and Pittsburgh were 60% of the New York to Chicago rate, and each zone west of Pittsburgh had a consecutively higher rate than that. Indianapolis had rates of 93%, and Peoria had rates of 110% of the New-York-Chicago base rate. Other seaboard cities had rate differentials above or below New York City. On import and export traffic to Boston, from the Middle West, the rate was on a par with New York while for domestic traffic, Boston had rates above New York. Philadelphia had a rate somewhat lower than New York; Baltimore had a differential under New York, but higher than Philadelphia; while Norfolk was on a par with Baltimore.[42]

These rate agreements were the manner in which it was sought to keep competition within tolerable limits. However, cities generally bucked the differential set for them, because of a desire for lower differentials, and the consequent increase in business that would accompany such a move. In general, the Interstate Commerce Commission upheld the seaboard differentials until 1931, when the revised trunk-line rates were put into effect. Through this revision rates to and from seaboard cities were fixed by rate scales that were applied to all points, with such modifications as were deemed necessary to meet local problems. The situation is the same, with the old

differential system still very much in force. The Commission has made little progress in settling problems connected with the adjustment of rates between the rival North Atlantic industrial and commercial centers and the interior of the United States.[43]

The Interstate Commerce Commission has also been faced with the problem of adjusting railroad rates on imports and exports through the various rival seaboard ports along the Atlantic, the Gulf and the Pacific Coast. Naturally, the ports along the Gulf thought the traffic headed for the Mississippi Valley should be routed through the Gulf. This brought the railroads connecting to the Gulf and the Gulf ports into direct competition with the east-west lines running to the Atlantic ports. As commerce with the Orient increased, the Pacific ports grew in importance. The railroads connecting the Middle West with the Pacific ports made such rates as would place the Pacific ports on a parity with the Atlantic ports, in competing for trade with the Orient.

In order to encourage the movement of import and export products through the Gulf ports the rail lines serving these ports lowered the rates on those products, the while maintaining the rates at standard level on products of domestic origin. The adjustment of rates to Gulf ports, for the export trade, was allowed by the Director-General of the railroads in 1919. The same process was later approved by the Interstate Commerce Commission when the railroads were returned to private

operation.[44]

The rates and adjustments attendant upon such a policy became increasingly unsatisfactory to all parties concerned. As these rates violated the long-and-short-haul clause of the Interstate Commerce Act, the Interstate Commerce Commission eventually felt constrained to take some action on the matter. As a result, the Commission suspended the preferential rate and carried on an investigation as to the merits of relieving the carriers from the restrictions of the long-and-short-haul clause. In 1930, the Commission handed down a decision that was generally favorable to the southern lines, but it still did not permit the use of the rates until it had carried the investigation further.[45] In 1932, the Commission established a new class rate which affected the relation of the eastern trunk line rates and the import-export rates of the southern lines. In 1935, a new decision was handed down which reinstated the suspended rates of 1930. These rates were favorable to the southern lines. The eastern trunk lines are bitterly opposed to these rates, and the battle will continue to rage until some positive solution is found.[46]

One of the largest problems confronting the Interstate Commerce Commission, at the present time, is the administration of the fourth section of the Interstate Commerce Act, commonly referred to as the "long-and-short-haul clause". That section was placed in the law in order to do away with a higher rate for a shorter than a longer haul over the same

track and in the same direction. The long-and-short-haul clause forbids charging a higher rate for a shorter intermediate haul than for a long haul under the same or similar circumstances. It was left to the carrier to decide whether the circumstances were identical or similar, and whether the rates applying to the two hauls would cause them to fall under the jurisdiction of the fourth section. The original action of the carrier then would fall under the rate making jurisdiction of the Commission.[47]

The Commission ruled, soon after the passage of the section, that competition between a rail and a water-carrier would create a set of dissimilar circumstances, but that competition between two railroads would not present dissimilar circumstances, thus exempting competition between rail and water from the fourth section. In 1897, the United States Supreme Court overruled the Commission in the Troy Case, and handed down a decision which stated that dissimilar conditions might exist in the competition between two railroads.[48] The section was virtually invalidated until the passage of the Mann-Elkins Act, in 1910, which eliminated the words "under substantially similar circumstances and conditions", and prohibited the carriers the charging of higher rates for shorter hauls than for longer hauls over the same track and in the same direction, unless first relieved from the restriction of the fourth section by the Commission.[49]

The fourth section has continued to grow as a controversial issue since it was strengthened by certain passages in the

Transportation Act of 1920 and because of increased intercoastal water competition. The passages in the Transportation Act state that "if a circuitous route is, because of such circuity, granted authority to meet the competition of a more direct line or route to or from competitive points and to maintain higher charges to or from intermediate points on its line, the authority shall not include intermediate points as to which the haul of the petitioning line is not longer than that of the direct line or route between the competitive points".[50] The amendment further states that the Commission is not to allow charges which are not compensatory for the services performed.

Because the Commission, and not the carriers, decide what rates are reasonable and compensatory, much coast to coast freight has slipped from the grasp of the transcontinental rail lines, and is now traveling by intercoastal waterway. The carriers claim that it would be to their advantage to attempt to retain long haul traffic at rates that no more than clear expense, and allow the intermediate traffic to bear the cost of fixed charges and overhead. The carriers also claim that removal of the long-and-short-haul restrictions would not inevitably result in higher intermediate charges, but would go toward the lowering of intermediate rates. This would come as a result of the larger volume of traffic hauled, because of their lower long haul rates.[51]

The Commission has remained adamant to such pleas on the part of the carriers. However, where there is good reason, the Commission has allowed a large amount of latitude in the carrying out of the section, and in some cases has completely waived the statute.

The carriers are opposed to the section, and would very much like to see it repealed. This is especially true of the carriers running in competition to water carriers. It is the contention of the railroad carriers that ample protection is afforded to the public through the exercise of the first three sections of the Interstate Commerce Act, as far as discrimination is concerned. Although the opinion of the shippers is divided, the majority of them favor continuation of the fourth section.[52] In the 1934 report, the Coordinator suggested that the section not be repealed, but that the amendments added after 1920 be repealed, and the statute be allowed to assume its pre-war form.[53] In 1935, and again in 1937, a bill was introduced, known as the Pettengill Bill, which called for the repeal of the long-and-short-haul clause. It passed the House, but died in the Senate. This Bill would have substituted for the long-and-short-haul clause a method by which the carriers might file lower rates with the Interstate Commerce Commission for longer hauls than for short hauls, in the same direction. This rate would be subject to approval or suspension by the Commission. Should the reasonableness of the rate

be questioned, the burden of proof that the rate did not violate sections 1, 2 or 3 of the Interstate Commerce Act would rest with the carriers. In reporting the Bill, the Committee of the House stated that under the present system, the carriers were handicapped in competition with other means of transportation. It further stated that all rates would be subject to the regulation of the Commission so that no violation of the Interstate Commerce Act could take place.[54]

It is right that long-and-short hauls should be determined by the Commission in much the same manner as all other railroad rates. The problem has arisen only because of the competition that the railroads are forced to meet in the shape of non-regulated rates of other means of transportation. With this in mind, any change in the fourth section of the Interstate Commerce Act is not a solution, but merely a palliative. The solution will only come when all forms of transportation are regulated in like measure by one unified administrative body.

On January 13, 1939, a bill, to be known as the Transportation Act of 1939, was introduced into the House and was referred to the Committee on Interstate and Foreign Commerce. This bill was designed to give the Interstate Commerce Commission a more efficient exercise of the rate making power and to extend the jurisdiction of the Commission in relation to the fixing of minimum rates and the rates of inland water transportation. At this writing, no further disposition of the bill

has been made, since it still has not reported out of Committee.[55]

The President's Report, published during December, 1938, also called for a repeal of the long-and-short haul clause and a revision of the rate making rule of the Interstate Commerce Act. It felt that the railroads are laboring under a great burden, and that one of the ways that this may be rectified would be to remove some of the inhibitory rules of rates and rate making. It further states that the Commission should only control rates so far as to protect the public welfare, allowing the determination of the rate schedule to remain in control of the railroads.[56]

Although the freight traffic of the railroad has long been the mainstay of its revenue, the carriage of passengers has also contributed a fair share toward the whole. In 1910, freight traffic contributed about seven-tenths of the total railroad revenue, passenger about two-tenths, and other revenue, including express, contributed a little less than one-tenth. By 1920, the total amount of freight revenue of the railroads had risen to 73.22% of the whole, while passenger traffic remained at slightly more than 20%. In 1930, freight had risen to 79%, and passenger traffic had fallen to 13%. In 1936, freight was 81.7% and passenger revenue at 10%. A somewhat similar declining passenger traffic in relation to an increasing freight traffic has continued throughout 1938. However,

the ratios have become somewhat upset, due to a business recession during 1938 which caused freight traffic to tumble somewhat faster than passenger traffic.[57]

Passenger traffic began to decline, on the railroads, even before the start of the business depression of 1929. Although the truck has made serious inroads upon freight traffic, it cannot compare with the inroads made upon railroad passenger transport by the automobile. During the period between 1929 and 1934, railroad income from freight dropped by 55%, while railroad passenger income dropped to the order of 68%. By 1937, freight revenue was back to nearly 75% of the 1929 level, whereas passenger revenue was still 50% of that year. The contrast between 1926 and 1937 was even more striking, with the revenue of 1926 standing at over 1 billion in passenger revenue, in comparision with an income of less than 450 million in 1937.[58]

Because of active inter-carrier competition, and because of state regulation, passenger fare levels were at a rather low point for several years prior to the World War. Very little change had taken place in the level of fares. In 1856, the Hudson River Railroad was charging at the rate of two cents per mile.[59] By 1916, the average railroad rate had only gone up by four-hundredths of a cent. At that time there were thirteen states which had passed laws setting maximum passenger rates. In many parts of the country, particularly throughout

the midwest, as a result of enactments by Wisconsin, and neighboring states, two cents per mile was coming to be accepted as the standard rate for travel in coaches. The general level for interstate travel, and for intrastate travel, except in states that had fixed lower rates, was three cents per mile for the one-way rate. The receipt for passenger mile was reduced to about two cents per mile as a result of reduced rates offered to holders of commutation tickets, round trips and excursions.[60]

When the Director General of the Railroads took charge in 1918, he immediately issued an order which raised the passenger fare to three cents per mile, except in those places operating under a higher rate. Commuting tickets were raised about 10% and a surcharge of one half cent per mile was levied on all Pullman passengers. The increase to riders of the day coach was estimated to be in the neighborhood of 20%.[61]

In 1920, when the railroads were once again returned to private operation, the Commission was instructed to allow the carriers to levy rates that would allow them a fair return on that part of their investment in property devoted to the service of transportation. During the middle of 1920 and after extensive hearings, the Commission issued an order providing for a rise in passenger and freight fares. The freight rate was raised according to the divisional or territorial grouping policy, but the rise in the passenger rate was general throughout the country. The general passenger rate was raised

by 20% and a 50% surcharge was levied on all special equipment, such as sleepers, parlor cars, etc.[62]

Thus, the general passenger rate was raised from three to three and six-tenths cents per mile. When the Director General had ordered the fare increase, as a result of Government control, the rate was general throughout the country. However, with the end of that control, the old intrastate rates once more went back into force, causing a large difference to appear between intrastate and interstate rates. Consequently, when the interstate fare was raised, many railroads at once petitioned the individual state governments for authority to raise the intrastate rate to that of the interstate rate. The vast majority of states so petitioned granted the raise.[63]

It is provided in Section 4 of the Transportation Act of 1920 that if the Commission finds that rates or fares fixed by intrastate authorities are unfair or unjust, or in restraint of interstate or foreign commerce, the Commission is to prescribe the rates or fares to be charged thereafter, the law of any state to the contrary notwithstanding. When some states refused to comply with the request that the intrastate rates be raised in order to comply with the interstate rates, many carriers appealed to the Commission to remove the unlawful discrimination caused by the refusal of certain states to change their rulings regarding intrastate rates and fares. The Commission carried on further proceedings to investigate these claims

and it was so ordered.[64]

The states felt that this was rather a high handed presumption of their authority, on the part of the Commission, and therefore instituted court proceedings in an attempt to compel the Federal Government to rescind its order. The carriers retaliated by attempting to have injunctions issued in order to restrain the states from interfering with the carrying out of the Commission's orders. The question was finally settled in favor of the Federal Government in both the Wisconsin and New York rate cases. The Railroad Commission of Wisconsin assumed as its basis of argument that the statute of the state fixing the railroad fare at two cents per mile must control the action of the State Commission and compel it to enforce the law. The order of the Interstate Commerce Commission required that the carriers raise their fares and charges of intrastate transport to the level of the interstate rate. The carriers countered the efforts of the Wisconsin Commission by appealing for a restraining order against the state body. The injunction was issued by the District Court of the United States for the Eastern District of Wisconsin. The decision of the District Court was upheld in a decree issued by the United States Supreme Court on February 27, 1933.[65]

The New York rate case decision was also handed down on the same day. Here also, the Commission required that the carriers raise their intrastate rates and charges to conformity

with the intrastate rates. The Public Service Commission of New York State granted the increase in intrastate freight rates, but refused to allow the increase in milk and passenger rates. The Public Service Commission claimed that the Interstate Commerce Commission's power to raise intrastate rates to conformity with interstate rates in order to eliminate discriminations did not authorize them to issue a state-wide order changing all intrastate rates and charges. The State of New York further contended that the New York Central Railroad Company would be violating the law by raising its passenger charges, as its original charter stated that it was not to charge more than two cents per mile for the carriage of passengers between New York and Albany and Albany and Buffalo. The order of the Interstate Commerce Commission would cause a violation of contract on the part of the railroad company. Furthermore, the order of the Commission would be depriving the people of the State of New York of their property without due process of law. The Court cited that portion of a previous decision which stated that any private contract, or public action on the part of the individual states must yield to the authority of the Interstate Commerce Commission, if it obstructed interstate or foreign commerce, to the contrary notwithstanding.[66] The ruling of the Supreme Court in the Wisconsin Case was said to hold in the New York case, and the appeal was denied.

As a result of these decisions, the Interstate Commerce Commission was definitely allowed the power of setting changes in intrastate rates and charges necessary to prevent unreasonable discrimination against interstate rates. The Interstate Commerce Commission has tried not to be high-handed in its setting of rates and schedules affecting intrastate orders. It is for this reason that it holds extensive hearings before making changes of rates and charges. States and individuals may also petition the Commission for relief if it is felt that the intrastate effects of interstate orders are diliatory. The Interstate Commerce Commission depends to a considerable extent upon the various state commissions for aid in carrying out Section 13 of the Interstate Commerce Act and various other Federal railroad provisions.[67]

The rapid swing of passenger travel from the railroads to other means of transport was only partially due to the high passenger rates maintained for over ten years. Travel by bus increased to a certain extent, but the major part of travel in the United States started to go to the private automobile. It was not until travel by rail had shrunk to about a third of its former size that the Interstate Commerce Commission realized that some action would have to be taken.[68]

In 1932, the Interstate Commerce Commission forwarded a questionnaire to the presidents of all of the Class I railroads of the United States asking them whether they thought that

volume of passenger traffic could be increased by means of fare reductions, and asking for suggestions for relieving freight carriers from the burden of unprofitable passenger service.[69] In 1933, the Commission stated that the vast majority of railroad presidents who had replied to the questionnaire favored reductions in the basic passenger fare. They were not quite so unanimous as to the amount of reduction that should be effected. The persons opposed to fare reductions were practically all in charge of roads operating in the Official, or Eastern, territory.[70]

The Commission did not at once act upon its questionnaire of 1932. However, the Southern Railroad soon established greatly reduced fares. That carrier was soon followed in that policy by two other Southern roads. On December 1, 1933, all Southern carriers established fares of 1.5 cents per mile in coaches, and three cents per mile in parlor and sleeping cars. They also offered round trip fares of 2.5 cents and 2 cents, with time limits of six months and 15 days, respectively. The carriers in the western territory established rates of 3 cents in parlor and sleeping cars, and 2 cents in day coaches. For round trips special rates ranging down to 1.8 cents per mile, depending upon the time limit involved, were offered. No change was made by the roads in the East. It was generally believed in the East that more revenue was to be lost in that manner than was to be gained through any policy of rate cutting.[71]

In June, 1934, an investigation was held by the Interstate Commerce Commission on the subject of passenger fares and surcharges. It was the intention of the Commission to determine whether railroad fares throughout the country were reasonable and whether Pullman surcharges should be made by railroads.[72] Public opinion and the action of the Southern and Western lines spurred the investigation of rates and charges by the Commission.

It was the intention of the Interstate Commerce Commission to decide three issues. They wished to determine whether they ought to fix minimum or maximum charges, whether passengers in sleeping cars should pay higher or lower rates, and whether a maximum and minimum rate should be set for the entire country, or whether variations should be set for each major portion of the country. Representatives of all large railroad systems of the country testified before extensive hearings held by the Commission. In addition to those persons, there were also representatives of the United Commercial Travelers, the National Industrial Traffic League, the National Association of Motor Bus Operators, the National Bus Traffic Association and the International Association of Convention Bureaus. Following the decision of th examiner in 1935, the Commission handed down its decision and order on February 28th, 1936.[73]

The examiner's report contained detailed information regarding each of the three territorial groups of railroads, and

for some of the individual carriers. Information was had regarding the decline from 1920 through 1934 in the several categories of railroad traffic, and the revenues therefrom. Data was also available concerning the deficits incurred as a result of passenger service. The report is one of the most complete of its type on record.[74]

Since the investigation was started one month after the Southern and Western railroads had begun their policy of rate reduction, the examiner layed especial emphasis upon their experiences as to the result of reduced passenger rate upon the volume of traffic and upon the volume of revenue resulting. The examiner found that the Southern and Western roads had benefited in point of revenue and number of passengers after a not unreasonable rate reduction.[75]

The large roads in the east such as the New York, New Haven and Hartford, the New York Central and the Pennsylvania testified against any reduction and the abolition of the Pullman surcharge. The Baltimore and Ohio and the Norfolk and Western, alone of the Eastern roads, were in favor of a rate reduction, the Baltimore and Ohio because it desired it, and the Norfolk and Western because it had already reduced its fares. The Eastern carriers claimed that a reduction from 3.6 cents to 2.5 cents per mile would reduce revenue by more than 30%. The examiner stated that the Eastern roads were securing an average fare of about 2.5 cents, because of the application of a large number of special and exceptional

fares. A basic fare of 2.5 cents would yield the same amount, according to calculations. The examiner pointed out that a fare of 2 cents in coaches and 3 cents in pullmans would produce a railroad revenue of slightly less than 2.5 cents per mile. Since a reduction of fare had resulted in increased travel throughout the South and the West, the examiner felt that reduced fare in the East would result in more favorable conditions.[76]

The examiner's findings were as follows;

1. The railroads must take extraordinary measures to regain their lost passenger traffic.
2. The passenger traffic of the future looks promising, but the rates must commensurate with the convenience and comfort of highway travel and with changed economic conditions.
3. The Southern and Western lines have proven that the remedy is a reduction of fares.
4. The increased revenue in the South and West was not due to increased business activity only, and that increases in traffic might continue to be expected in the face of reduced fares.
5. The conditions in the East did not warrant a continuation of higher fares in that section of the country as opposed to other sections, and that there should be a standard passenger rate throughout the country.
6. Pullman surcharge caused more injury than benefit.
7. Extra fare trains were permissible, providing adequate passenger service was provided between the same points by regular fare trains.

The examiner recommended that the Pullman surcharge be eliminated and that a basic fare of two cents per mile be established for coach travel, and three cents per mile be established

as the fare for travel in Pullman cars. The railroads were to be permitted to charge less if they cared to, and they were also permitted to charge extra fares on certain trains. The examiner also reached the conclusion that there was no violation of the railroad laws, except in the case of the long-and-short-haul clause, as far as the reduced rates of the Western and Southern lines were concerned. Furthermore, he urged that no restraint be placed upon railroads exercising their right, under Section 22, to issue mileage, excursion or commutation tickets.[78]

Following the publishing of the examiner's report, the Interstate Commerce Commission held a lengthy investigation. All persons in any manner connected with the proposed rate changes were given full opportunity to testify either for or against the contemplated changes. All the Eastern roads, aside from the Baltimore and Ohio and the Norfolk and Western testified against the 2 and 3 cent rate and asked that a proposed rate of 2.5 cents for coaches and 3 cent rate for Pullman, with the elimination of the Pullman surcharge, be tried. On February 28, 1936, the Commission, by a vote of the majority, handed down an order which was to go into effect the following June 1. This order took full cognizance of the examiner's report, and established the 2 and 3 cent rate as the basic passenger fare throughout the country. The order advanced, as its justification, the same arguments in favor

of the rate cut as had been included in the examiner's report of an earlier date.[79]

In addition to establishing the 2 and 3 cent rate, and the elimination of the Pullman surcharge, the Commission permitted the continued issuance of mileage, excursion and commutation rates. The Commission also set a minimum charge of 10 cents and allowed the railroads to raise their fares so that the final figure of the fare would end in 0 or 5.[80]

The decision of the Commission was not unanimous. One commissioner did not vote, while four wrote a dissenting opinion. It was the opinion of the minority that the fare, as set by the Commission, was below the cost of the service and that the law did not require that service be made to continue at a loss. Some of the dissenters, on the other hand, felt that the rate of 2 and 3 cents was still too high, and that if the railroads wished to recover passenger revenue from the private automobile some still lower rate must be found. The minority also objected to the Commission's assumption of managerial and discretional duties.[81]

During the latter part of 1936, after this order had gone into effect, passenger revenue increased by 15% over 1935. Just what portion of the increase came as a result of the lower passenger rate, and what portion came as a result of increased business activity is impossible to say. However, during a similar period, freight increased over 1935 by a fraction over 18%. It was thought that the favorable increases would

continue.[82]

Passenger miles reported to the Interstate Commerce Commission by the Class I roads of the country showed an increase of 15.9% over a corresponding period in 1936. With the industrial recession of 1937 and 1938, passenger traffic once again began to fall off.[83] The decline in passenger traffic was further spurred on by a granting of increases in the passenger rates.

The railroads in the East argued for an increase on the basis that the increased travel at a lower rate caused them to operate at even more of a loss than if they were to operate a smaller volume of traffic at a higher charge.[84]

Thus, in November, 1937, an investigation was started as a result of a petition asking for leave to raise freight rates by 15% and to raise passenger fares in coaches from 2 to 2.5 cents per mile. On March 8, 1938, the Commission handed down its decision.[85]

The Commission refused to permit an increase of 15% in freight rates, feeling that such a rise was unwarranted. However, they did permit the railroad to raise their freight rates 10%. The rates going into effect at that time have remained in force since, with but minor revisions to individual commodities.[86]

With respect to the proposed rates of the Eastern carriers, concerning passenger fare increases, the Commission found the increased fares not justified. However, in view of the

continued decline in rail travel, and the falling of passenger revenue, an increase to 2.5 cents per mile was permitted for an experimental period of 18 months.[87]

The Pullman Company also requested a fare increase of 10% during the latter part of 1937. Thereupon, an investigation was held, and the Commission decided that because of the low rate of return on investment and value, the applicant was permitted to raise the rates for Pullman accomodation.[88]

Consequently, permission was granted for the Pullman Company to raise its rates by 5%. It was felt that 10% would have granted a larger amount of revenue than was necessary to meet the purposes of the increase. This decision came as a result of an appeal for a higher rate on the basis of a higher operating cost in relation to the operating income.[89]

It is difficult to estimate what the future rate policy of the Interstate Commerce Commission will be. The recent rate changes have illustrated the positive nature of the Commission's actions. There are two things that will materially aid the Commission in carrying out its ends.

One of these factors is the placing of the highway transport of the country under the jurisdiction of the Interstate Commerce Commission. As a result of the Motor Carrier's Act of 1935, the Commission will be able to eliminate injustices and discriminations between rail and highway carriers working equally to the harm of both types of carrier. Effective

Governmental regulation of railroad carriers is impossible if the Commission does not have control over highway transport. If it has the necessary control, it may carry out policies dedicated to the public interest as well as to the carrier's interests.

The other factor that will materially aid the Commission is the policy of coordination of transportaion facilities of the country. This policy of coordination, furthered by the enactment of the Motor Carrier's Act of 1935, will enable the development of unified systems of transportation with a maximum of efficiency and economy.

The President's Report of 1938 recommended that the Commission's rate making power be made even more comprehensive. The report would spread the Commission's power over rates set by all forms of interstate transportation.[90]

The present jurisdiction of the Interstate Commerce Commission is rather limited, except for railroads and, to a certain extent, motor carriers. Eventually, all forms of interstate commerce will be carried on under the jurisdiction of a greatly enlarged interstate commerce commission having complete ascendency. In the meantime, the railroads of the country will have to depend upon the offices of the Association of American Railroads and the Interstate Commerce Commission in an attempt to create a nation wide passenger service and in the coordination of all types of service under the most advantageous conditions.

FOOTNOTES

1. Association of American Railroads, Statistics of Railways of Class I, United States, sheet 4 and 12.

2. S. T. Daggers, Principles of Inland Transportation, p. 320-321.

3. S. O. Dunn, The Regulation of Railroads, p. 21, 67.

4. C. B. Aitchison, Interstate Commerce Acts, vol. I, p. 80-81.

5. Ibid., vol. I, p. 85-86.

6. C. S. Duncan, A National Transportation Policy, p. 10-15.

7. Ibid., p. 268-269.

8. Houston, East & West Texas Railway Company v. United States, 234 U. S. 342.

9. Aitchison, op. cit., vol. I, p. 85-86.

10. Ibid., vol. I, p. 86-87.

11. Shreveport Rate Case, Houston, East & West Texas Railway Co. v. United States, 234 U. S. 342.

12. Railroad Commission of Wisconsin v. C. B. & Q. Railroad Co., 257 U. S. 561; State of New York v. United States 257 U. S. 591.

13. Aitchison, op. cit., vol. III, p. 2103-2105.

14. Association of American Railroads, Statistics, sheet 1.

15. Dayton, Goose Creek Railway Co. v. United States, 263 U. S. 456.

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CHAPTER VII

THE RELATION OF GOVERNMENT TO RAILROAD SERVICE

In many countries throughout the world, the railroad companies are granted charters by the government, and are thus vested with the right to provide the facilities for and perform the services of transportation. This is the case in such countries as Great Britain, Canada, and the United States of America. The case of the United States differs to a certain extent from other countries, however. In the United States most of the railroad companies have been granted charters for service by the individual states. As practically all railroads are interstate carriers, or carry freight that has crossed state boundaries, they thereupon fall under the jurisdiction of the Federal Government and its right to regulate interstate commerce and its agencies.[1]

Since the railroads were created to serve the public and to render a service of public nature, it is only right that the Government should concern itself with the service rendered, as well as the rates, financial affairs, labor policy, and the intercorporate relations of the various carriers. In order that these tasks may be carried out to the fullest extent, it is only natural that the Government engage in two policies, one of construction, and one of prevention. In the fields of railroad service, this twofold policy takes the form of various measures to further the ends of safety, as far as the preventive phase is concerned, while the constructive angle attempts

to increase economy and efficiency of service.

For more than forty years, the Federal Government has, with increasing success, carried on a campaign of legislation and efficient administration that has done much to minimize the risks of railroad traffic and travel. Of the several means of transport, the Government has been able to help make the railroads the safest means of transportation. Having accomplished this, the Government has gone ahead with its campaign by attempting to aid the railroads in further reducing the expenses and increasing the efficiency of their service. The exigent circumstances surrounding the recent plight of the railroads, coming as a result of a sudden decrease in traffic and a vast expansion of motor traffic, has urged the Government on in its attempt to make regulation of railroad service helpful and constructive to the carriers. The Emergency Transportation Act of 1933 is an excellent example of just this type of activity.

It is to the interests of the carriers that attempts be made to enlarge the scope of their activities by adding to traffic and reducing the cost of service, in order that net earnings and profits may rise. Many of the measures by which economy and efficiency of service may be increased can be taken only through the cooperation and common action of many carriers. It is not easy for the carriers to unite, particularly in the light of having passed through an era in which each has

built up its services and facilities in the face of strong intercorporate competition, and therefore feels that individual action is to the best advantages of its creditors and stockholders. However, as the business depression of 1932 wore on, it became more apparent to even the most obtuse railroad executive that some means of collective action must be taken. As a preliminary step toward this end, in 1934 the railroad executives caused the combination of the American Railway Association and the Association ofRailway Executives, the two former cooperative bodies, into one larger and stronger body now known as the Association of American Railroads with larger authority to deal with matters of common interest than either of its predecessors possessed.[2]

Although the carriers have continuously attempted to reduce cost and increase the efficiency of their service by improving the power and flexibility of their motive power, the increase in efficiency during the past two decades is little short of miraculous. The builders and users of locomotives have cooperated to develop new types of power, steam, electric and diesel, and to increase the efficiency both in the generation and in the use of this new power. Aside from the enforcing of safety regulations, the Government has no probelm in connection with the further development of the power efficiency of railroad transportation. Until recent times, much less consideration had been given to freight and passenger equipment

than had been devoted to increasing power.[3]

In an attempt to win back some of the traffic losses caused by adverse business conditions and increasing competition from automobiles and trucks, the railroads have been forced to adapt their passenger and freight equipment to the several kinds of transportation service to be rendered. In so doing, they have carried on a search for lighter and stronger materials for the construction of freight and passenger cars and to go even further in their attempts to adapt their equipment to the services to be rendered.[4]

The new day in railroad rolling-stock began even before cooperative steps were taken by combining the two large railroad executive organizations. The American Railway Association carried on a continuous search for new and improved railroad methods much before it was combined into the Association of American Railroads. In 1933, it culminated its search with the publication of a volume entitled, THE AMERICAN RAILROAD IN LABORATORY. This book contained description of research being carried on in 70 subjects pertaining to locomotives, 38 subjects having to do with passenger equipment and 65 subjects dealing with the freight car. In addition, 100 other subjects dealt with various phases of the railroad operating problem, including telegraph and telephone, engineering, tools and signals. As a result of these and other research activities improvements in railroad rolling-stock and other phases of railroad operation are being made continuously and ever more

frequently.[5]

Although there are still a great number of the older type of locomotive and passenger service cars in service, the railroads are slowly changing the outline of the entire picture. The air conditioning of passenger cars is proceeding at an ever accelerating rate. At the end of 1936, there were 8,000 air conditioned passenger coaches and Pullman cars in service and at the end of 1938 the number had been more than doubled.[6] Various types of alloys are now being used in the construction of both freight and passenger cars to be used in high speed operation. The use of these materials has lightened the weight of such cars by more than 50%, although the strength of the car has been increased.[7] There are several trains now that operate at a scheduled speed of over 100 miles per hour. By the end of 1938 the speed up in passenger service reached an all time high. There were 66 runs covering 5899 miles at a speed of over 70 miles per hour, and 2,008 runs covering 130,129 miles at speeds ranging between 60 and 67 miles per hour.[8] Less startling, but just as important in point of travel, are the improvements that have been made in the construction of stronger wheels, better roadbeds, the use of roller and ball bearings, changes in passenger car design and in the heating and lighting of these cars.

All of these improvements are illustrative of the attempts being made on the part of the carriers to render more efficient, economical and attractive services. Through cooperation, made

even easier through the combined force of the Association of American Railroads, the carriers are able to quicken their changes in service and equipment. Notwithstanding the fact that the cost of locomotives, cars, miscellaneous equipment, fuel and lumber and labor was generally the highest in history, and the fact that the average tariff is almost the lowest since the World War, the carriers are continually attempting to improve their service by speeding up both freight and passenger service and by buying new and expensive equipment to make travel by rail more comfortable and desirable.[9] Thus, the Government need not concern itself with technical progress, but it can be helpful to the public and to the carriers through the administration of the safety appliance laws, through the activities of the Bureau of Service of the Interstate Commerce Commission, through the furtherance of intercorporate cooperation of the carriers and through the pointing out of changes in operating methods and practices that will reduce cost and improve service.

The Government enters the picture of regulation of service of the railroads by adopting and enforcing the use of certain types of safety appliances. While every company is interested in adopting safety measures that will safeguard its employees and aid in the carrying out of its service, little can be accomplished if each railroad acts separately in the adoption of safety appliances.[10] Freight cars, and to a certain extent, passenger cars are freely exchanged from one railroad to

another. At the present time, however, a large joint action is being carried on through the promptings of the Car Service Division of the Association of American Railroads, in the adoption of certain types of standard safety appliance.[11] The accident rate of the carriers has fallen to a point lower than it was thought ever could be attained, with 35 passenger fatalities during the years 1935-37, and a very low mortality rate amongst the employees.[12]

However, the railroads were not always prompt in their willingness to accept safety measures. At first it was necessary for the Government to adopt mandatory measures in order to get the railroads to safeguard the lives of their employees and passengers. The first safety appliance law was passed in the Act of March 2, 1893. This law provided that the railroads equip their cars with automatic couplers, and with continuous train and locomotive brakes. This statute required all locomotives to be equipped with driving wheel brakes and engineer valve by the beginning of 1898. It also provided that, after that date, no train would be permitted to run if it did not have a continuous braking system that would enable the engineer to bring the train under control without the use of the common handbrake.[13]

The statute also provided that the cars be equipped with automatic train couplers that would become coupled by impact, and could be disconnected without the necessity of a trainman going between the cars to do so. It was also provided that

by July 1, 1895, the carriers were required to have secure grabirons bolted to the ends of each car, for the greater safety of men in coupling and uncoupling. The Association of American Railways was able to advise a standard drawbar height for all cars, and having done that, the Interstate Commerce Commission was to enforce that height.[14]

Following the enactment of these laws, there was a business depression which seriously hampered the carrying out of the statute, and the Commission was bound to extend the time limits for the enumerated improvements in safety appliances. By 1903, the safety appliance acts were extended to cover the District of Columbia and the territories.[15] The Commission was also empowered to increase the percentage of cars in any train required to have air brakes. In 1910, a further safety measure was passed. This act provided that secure sill steps, hand brakes, running boards, ladders and secure grab irons at the top of such ladders be provided on all freight cars. The Commission was also given jurisdiction over this enactment.[16]

Through these enactments it was possible for the Government to bring about such changes in train operation and in equipment as to increase the safety in the railroad transportation service. In order that the Commission might be able to exercise its discretionary powers and enforce its statutes intelligently, the Commission was authorized to employ

inspectors under the Sundry Civil Appropriations Act in order to enforce the Act of 1893.[17]

Following the enactment of the Act of 1893, the Government became very conscious of the necessity for safety in the transportation industry, and passed a series of laws, most of them between 1900 and 1910, affecting all phases of safety in the transportation system.

In 1905, in an attempt to encourage the saving of life and the promotion of safety, Congress passed a law providing that the President could have bronze medals struck off and these medals to be given to person who had distinguished themselves in attempting to save life or avoid disaster on railroads. Since the passage of the Act, and up until the end of 1938, 69 applications had been filed, of which 45 have been approved.

In 1907 the first of a series of Hours of Service Acts was passed. These Acts provided that all persons engaged in the movement of interstate trains should not be in continuous service more than 16 hours in a 24 hour period, and that those persons who had been on duty for 16 hours should be off duty for at least 10 hours. The law also provided that dispatchers should not remain on duty for more than 9 hours at stations operated day and night, and not more than 13 out of 24 at stations and towers operated only during the day.[19]

With the passage of the Ash-Pan Act of 1908, it became unlawful for any railroad to use a locomotive whose ash pan

could not be emptied from the outside, and not require that the employee crawl under the machine in order to do this task.[20]

In 1910 Congress also required the carriers to make full and complete reports of all accidents to the Commission, in whatever form the Commission might specify.[21]

In the following year, the Boiler Inspection Act came into being. This Act requires the carriers to equip their locomotives with safe boilers and with the necessary safety devices.[22] This Act was amended by later acts passed in 1915 and 1924 subjecting the entire locomotive and tender to rigid governmental inspection.[23] Because of this service, the number of accidents caused by the failure of some part of the locomotive or of the boiler has fallen from 856 accidents in 1912 to 59 accidents in 1938, and the number of persons killed as a result thereof, from 91 to 5. It is interesting to note that all of the five boiler explosions that occurred during 1938 were caused by overheating of the crown sheets due to low water, a condition of man-failure rather than of engine-failure.[24] To better carry out this statute, the Interstate Commerce Commission established the Bureau of Locomotive Inspection with a staff of men for the inspection of the locomotives.[25]

The transportation of explosives was altered in its status, following the War, when Congress passed the Transportation of Explosives Act in 1921, prohibiting the transportation of

explosives upon a car engaged at the same time in the carrying of passengers.[26] As there were certain provisos made concerning the transportation of munitions, it was necessary for the Commission to alter its regulations concerning this type of transport. In 1938 much work was being done in connection with these provisions in finding better types of containers for the transport of poisonous and explosive materials.[27]

The question of block signalling and automatic train control has also come under Congressional attention. In 1906, Congress authorized the Commission to report on the condition and necessity for block signalling and automatic train control in the United States. By the Act of 1913, and subsequent acts, the money was provided for the carrying out of this survey.[28] The investigations and tests coming as a result of this activity found their way into the Transportation Act of 1920. By this Act, the Commission was uathorized to order any interstate carrier or railroad subject to the jurisdiction of the Commission to install automatic train stop devices, train control devices and any other safety appliances it deemed necessary.[29] By June 1922, the Commission adopted specifications and ordered 49 roads to install train stop and train control devices upon a full passenger locomotive division. This work was to be complete by the beginning of 1925. In 1924 more roads were ordered to install such devices, so that by the end of 1929, the Commission was able to state that safety devices applying

to automatic train control and train stop had been approved and tested by Commission engineers and were in full working order on 77 carriers. With the individual initiative of the roads the Commission was able to report that 11,453 miles of road, 20,239 miles of track and 8,904 locomotives had been equipped with automatic train control or train stop appliances. In 1929, the Commission stated that it would not order the installation of any more such devices, and since 1928, and in particular, the years of 1932, 1933 and 1934 numerous carriers have been permitted to discontinue the installation, operation and maintenance of train control devices, until further orders.[30] This has come as a result of the necessity of the roads to economize in capital expense and in maintenance and operating expenditure. On January 1, 1938 there was a total of 140,933 miles of track and 108,007 miles of road equipped with block signalling systems, of this 64,197 miles of raod being automatic block signal systems. There were also 10,400 miles of road, 20,160 miles of track and 9,707 locomotives equipped with automatic stop, train control and cab signal devices.[31] There has been some decrease in the mileage of line so equipped since 1932. At the present time about half the mileage of the United States is equipped with block signal systems.

The Bureau of Safety and the Bureau of Locomotive Inspection administrate and enforce the safety appliance laws. At first, the work of supervising the safety control was concentrated under a Division of Safety. During the year 1914-1915

the work of inspecting locomotives fell under this particular administration. However, in 1917, the Commission changed its general administrative organizations and created bureaus from the former divisions. The Bureau of Safety was created and the work of the Division of Locomotive Boiler Inspection was transferred to the Bureau of Locomotive Inspection. This change in jurisdiction came as a result of laws passed in 1915 which extended the work of locomotive inspection from that of inspecting the boiler to an inspection of the entire machine.[33]

The Bureau of Safety supervises the installation of all types of signalling equipment, records accident statistics, and also sees that the railroads stick to the letter of the law as far as hours of service are concerned. It has jurisdiction over the operation of air brakes and the installation of new and approved types of braking systems. It sees to such widely diverse things as the arrangement of postal service cars and the adoption of new low-slack draft gears. At the present time, it is engaged in compelling the discontinuance of the use of the arch-bar truck, to the failure of which may be traced at least one serious accident during the past year. In this work it is being helped to a considerable extent by the Association of American Railroads. Cars with this type of truck have not been accepted in interchange since January 1, 1939, by joint order of the Association of American Railroads

and the Commission.[33]

In May, 1917, Congress enacted the Esch Car Service Act, which was amended and made somewhat more comprehensive by the Transportation Act of 1920. According to the Act, every carrier was to furnish safe and adequate car service and establish just and reasonable rates, rules and regulations for the carrying out of this car service. The rules and regulations were to be filed with the Commission. It was to be the duty of the Commission to fix the rates to be charged one carrier by another for the use of its equipment. The Commission was also empowered, in a state of emergency, to suspend the carriers' car service rules and to take over the distribution of cars, the joint use of terminals and to determine the routing and priority of movement of traffic.[34]

Not having been previously in a position to dictate railway management or direction of movements, the Commission felt constrained to establish a Car Service Bureau and the carriers established a commission on car service through the American Railway Association.

When first established, the Commission's Car Service Bureau had little else to do but give directions to the carriers' Car Service Bureau, which took charge of the distribution of cars. In 1917 the railroads were taken over for operation by the Government. At the beginning of 1918 the Director-General of the Railroads created the car service section of the Division of Transportation of the Railroad Administration. The

carriers' commission and its staff were taken over by the Government through the Car Service Division of the Transportation Administration which controlled the distribution and use of cars during the period of Government operation of railroads.[35]

When the roads were returned to their owners, in 1920, the distribution of cars once again came under the jurisdiction of the carriers Car Service Commission. This body was subject to the jurisdiction of the Interstate Commerce Commission, acting under the enlarged powers granted to it by the Transportation Act. The American Railway Association organized a body of rules to be observed regarding car service on the day that the Transportation Act became effective. The Car Service Division of the Association once again began to function.[36] Shortly after the resumption of operations under this new setup, the carriers were faced with a situation with which they were not able to cope. In April of that year, the carriers were faced with a large increase in traffic, as a result of the War, as well as a strike of yardmen and switchmen, in many cities. Thereupon the carriers petitioned the Government to make use of the emergency powers granted to it by the Transportation Act, and take control of car service and distribution. By the end of 1920, the cause of the petition had been largely alleviated, and the carriers once again took charge of car service through the Car Service Division of the Association.[37]

In 1922, the Commission was once again obliged to exercise its emergency powers. On April 1 the coal miners went on strike, followed by the railroad shopmen who went on strike in July. It became very difficult for the roads to secure the necessary fuel or to maintain their equipment to the proper degree. In order to meet the situation, the Commission was obliged to issue an order calling for the forwarding of freight by the most available route, disregarding routing preferences of shippers, and to give priority rights to food, other perishables, fuel and other commodities necessary for public welfare. Shortly thereafter, the strikers began to return to work. Despite an exceptionally heavy volume of traffic, the Commission was able to help the carriers through the summer and fall of that year. The business losses resulting from this traffic tie-up were large, but would have been much larger if the Commission had not the emergency power and the right to use it. In the Annual Report for 1923, the Commission stated that "this emergency was successfully met through the active cooperation of the Federal, State and local fuel administrators and railway officials both direct and through the Car Service Division of the American Railway Association."[38]

Prior to 1925, as is stated in the Interstate Commerce Commission Report of that year, the Bureau of Service had been mainly concerned with car service. At the beginning of April, 1925, the scope of this department was enlarged and subdivided into three sections, those of car service, of efficiency and economy of operation, and of transportation of

explosives and other dangerous articles. The section of efficiency and economy was established in order to help the Commission determine the proper railroad rates so that they might earn a fair return on their investment, as was prescribed in the Transportation Act. Although the Commission did not have the proper staff of technical experts to engage in so gigantic a task, it was able to gain a large amount of knowledge about the various types of railroad service and to take administrative action where and when needed in order to minimize congestion, or to require carriers to cooperate in greater measure with each other and with shippers in order to bring about a better and more coordinated service.[39]

During 1924-1925, 12 regional advisory boards were organized by the Railway Association's Car Service Commission. These organizations enabled the Commission's section of economy and efficiency to operate more efficiently and helpfully. These advisory boards are composed of representatives of carriers and shippers in each of the major sections of the country. Each board has a committee for each of the important types of traffic. Every three months the boards meet and make careful and accurate estimates of the volume of different categories of traffic and the equipment needed by each category during the coming three months.[40]

In addition to carrying out its ordinary functions, the Bureau of Service carried on an investigation over a period of years, beginning in 1925, of the practices of different

carriers in the repairing of locomotives, cars and equipment by shops other than their own. Carriers were required to file copies of such contracts with the Bureau. By means of this, the Bureau was able to show that charges in some cases were excessive and that the repairs could be carried on more cheaply in the carriers' own shops.[41]

In the annual reports of the Commission, it is shown that the Bureau of Service has engaged in many activities and has carried on investigations at the request of the Treasury, Interior and Agricultural Departments, the Reconstruction Finance Corporation, the Coordinator of Railroads and the Association of American Railroads. It has investigated matters pertaining to labor relations, maintenance of way and equipment, consolidation of shops, economy of operation, and certain other services which carriers perform.

During 1938, the Bureau exercised its emergency powers in two instances for the moving of cars without regard to routing orders, but in the best interests of expedient transportation. The Bureau has also cooperated with various weighing bureaus in making test weighs of fruit and vegetables for the purpose of establishing correct shipping weights. Car shortages developing in certain sections of the country were promptly handled by the Bureau's service agents and the affected carriers.[42]

During the height of the depression, in 1931, the Commission engaged in an investigation of carrier practices which

affected expenses. The Commission did not intend to make an exhaustive investigation of railroad management and operation in the light of economy and efficiency, but it did investigate certain practices engaged in by the carriers which came as a result of competition. The Commission felt that it was sometimes difficult for carriers to discontinue a particular service even if it is seriously affecting their income, but that by a public disclosure of the facts discontinuance may be affected if it is necessary. The investigation was arbitrarily divided into five parts dealing with railroad fuel, terminal services of class 1 railroads, construction and maintenance of private spurs for shippers, traffic expenses, and private freight cars. A sixth subject was added somewhat later, dealing with warehousing and storage at the Port of New York. The investigation was started by the circulation of questionnaires, followed by two years of hearings. As a result of this investigation, numerous decisions and orders have been handed down by the Commission dealing with specific practices. Although some of these decisions have been disallowed by the courts, in the main, the decisions of the Commission have held.[43]

Many of the items the Commission began to investigate in 1931 became subject to the investigation of the Federal Coordinator of Transportation in 1933, when that office was created. Thusly, when the Commission finished its investigations regarding fuel, the report was referred to the Federal Coordinator of Transportation, who in turn referred it to the three

regional coordinating committees of the carriers, appointed under the Emergency Transportation Act of 1933. The information accruing from the other portions of the investigations were also handed over to the Coordinator. The reports and finding of the Commission have materially assisted the Coordinator in making investigations and in preparing reports that have materially affected the practices of the carriers.[44]

In these investigations, the Commission found that private owner cars could be leased for less than the amount the shippers using the cars received from the railroads in car mileage payments. Thus, it was possible to utilize a private owner car at a lower rate than it was possible to use a car belonging to the railroad. In 201 ICC 323 the Commission ruled that the rates were to be, in no instance, lower than the published rate, thus doing away with that type of discrimination.

Through these investigations, the Commission was also able to help the Coordinator break down the long standing reciprocal arrangements for the purchase of fuel. In order to secure more traffic, many carriers had been obliged to engage in reciprocal agreements with coal mines for the purchase of fuel. This usually resulted in an increased cost to the carrier for the particular commodity purchased. As a result of these investigations, the carriers were able to tear themselves away from these business practices in many instances.[45]

On June 16th, 1933, the Emergency Transportation Act was enacted. This Act created the office of Coordinator of Transport

and set up a staff of assistants and three regional committees of the carriers to cooperate with him in carrying out the statute. It was the intention of the law to decrease costs and to encourage the carriers to avoid unnecessary service, to control allowances and accessorial services and to prevent other wastes and expenses. The law was also designed to promote the financial reorganization of the carriers and to provide a means of study for improving conditions surrounding transportation in all its forms. The Coordinator was to submit his plans and recommendations to the Commission. The Commission, in turn, was to submit these recommendations to the President, together with such comments as it deemed necessary.[46]

At the present time, the only phases of the Coordinator's investigations that will be dealt with are those concerning car service, namely the two divisions set up by the Coordinator known as the Section of Transportation Service and the Section of Car Pooling. The Section of Transportation Service engaged in three comprehensive reports, each made with the assistance of advisory committees composed of members of the carriers and other experts. The section of Car Pooling made and submitted one report. The three reports submitted by the Section of Transportation Service were submitted between March, 1934 and May, 1935 and dealt with Merchandise Traffic and Services, Passenger Traffic and Services and the third and most comprehensive of all was entitled Carload Freight Traffic and Services.

These reports were sent by the Coordinator to the carriers'

three regional committees with the request that the committees consider the reports and recommendations as to changes and improvements in railroad operation and give the Coordinator their conclusions as to the proposed plans. The carriers studied these plans very closely through the Regional Coordinating Committees and through the appropriate divisions of the Association of American Railroads.[47]

If carried out, the recommendations made by the Coordinator would require fundamental changes in car service, traffic management, equipment used and the services of railroads. Changes were recommended in every phase of car service from the management of less-than-carload freight right up to the pooling of freight equipment. It was the opinion of the Coordinator that the condition of the carriers was so stringent that the future success of the railroads depended on drastic revisions of the service methods and practices, which have grown up as a result of a long period of active and publicly enforced intercarrier competition. The Coordinator felt that the carriers did not need a framework of intersystem competition, but that they must needs adopt the most efficient and economical methods of operation and service performance to meet the challenge of highway vehicles and carriers.[48]

In 1934, the Coordinator issued a statement that was revolutionary in the extreme. This statement, as presented in the Merchandise Traffic Report, March, 1934 was as follows;

1. Consolidate rail L.C.L. express, and forwarder traffics and pool all rail merchandise services into two competing merchandise agencies, each operating throughout the United States, of comparable financial and traffic strength, owned by the railroad companies which respectively serve them, operated by an independent management in which the public is represented, under contracts encouraging direct and economical routing, but protecting the revenues of each participating carrier.

2. Collect and deliver merchandise at the patron's door, and transport it in shockproof containers at overall speeds in excess of 20 miles per hour.

3. Simplify classification, liberalize packing requirements, and adapt the express system of charges to all merchandise traffic by substituting for present scales a scale based upon cost plus a fair profit.

4. Coordinate rail and highway transportation by contract joint rates, lease or ownership, so that merchandise will be concentrated at and distributed from a limited number of key concentration stations by highway and moved between such stations in car lots, by rail.[49]

Far reaching recommendations of a comparable nature were made in all of the three headings falling under this Section of Transportation Service. The Passenger Traffic Report of 1935 makes 19 recommendations under the headings of modernize service, eliminate waste, promote travel and coordinate transportation.[50]

Under the heading of modernize service, the railroads were advised to establish fast and frequent local service on a base rate of 1½c per mile, in cooperation with highway carriers. It was also suggested that long distance travellers be accomodated with limited service at 2c per mile; that a better type of service be provided at 3c per mile, which would include a berth, and that a 5c per mile fare be set for deluxe service,

which would include a room and all incidentals. It was suggested that discounts be made for travelling parties, families and various types of business travellers, such as salesmen, etc.[51]

It was suggested that the railroads should consolidate their competitive traffic departments into a single joint organization and eliminate complex and unnecessary tariffs, consolidate their express, baggage and merchandise traffics, take over the reserved accommodation service from the Pullman Company and popularize sleeping and dining privileges as an integral part of reserved and deluxe service. It was suggested that the railroads consolidate stations and terminals, and the duplicate service for which they are used, and substitute highway transportation for local and limited services and air transportation for the deluxe services, wherever traffic was not large enough to warrant the use of the larger type of rail equipment. This would have all gone toward the elimination of waste.[52]

It was suggested that the railroads depend exclusively upon the Association of American Railroads to promote travel by market research and analysis, design and perscription of service, schedules and routes, pricing, tariff making, and publications and division and clearing of joint revenues. The Association was also to engage in the promotion of passenger traffic by planning, conduct and supervision.[53]

Under the fourth division of the recommendations, entitled; the coordination of transportation, the Association of American Railroads was again designated to create a single national

passenger service by means of unifying passenger terminals, trains, equipment, schedules and general railway facilities. The Association was to do this by contracts or joint rates and arrangements. In this manner, it was hoped to unify rail, air, water and highway transportation to the benefit of all.[54]

The American railroad depends upon carload freight for the greater part of its existence. This is even more apparent when we consider that the highway and air carriers have drawn off large portions of the passenger and merchandise traffic. The conclusions and recommendations of the Freight Traffic Report depend upon five outstanding points. It discusses traffic, service, charges and operations, and interrailway and intercarrier coordination.

In the main, the Freight Traffic Report concluded that the future railroad traffic had been reduced by the relocation and decentralization of industry, and by changes in types of power and fuel and an increase in private transportation. Under ordinary circumstances, this might not be so bad. However the situation had become complicated and unprofitable to the railroads as a result of competitive rate making and service, and the continued use of obsolete equipment, plant and methods.[55]

The report continued by making the generalization that modern business requires quickness in the movements of its products. Modern business also demands frequent service, store

door delivery and equipment adopted to business needs. The report states that the freight traffic has lost ground because of infrequent service and by long delays caused by frequent yarding of trains and interchange of freight.[56]

The report recommended that railroad charges be modified to conform with a certain number of groups and an attempt made to gain the maximum volume of profitable traffic excluding the consideration of cost characteristics. It felt that the complexities of the modern tariff should be simplified by the unification of rate systems and publishing authorities, by simplifying commodity classifications and by grouping the routes of carriers into a certain number of definite channels.[57]

The report took the long trains of the present day under close consideration, and concluded that the money saved along the line by these extremely long freight trains was lost due to the increased cost of yarding such tremendous trains. It felt that road line expenses were made extremely high by the frequent yarding of the train enroute and by the distribution of freight from freight centers by means of trains. The report also felt that the allowing of the shipper to choose the route for his goods was extremely wasteful. Because of this free routing privilege, assured by Federal statute, there is a needless expense and waste caused by circuitous routing, preferential treatment of shippers, undue complexity in tariffs, unnecessary interchange and terminal delay.[58]

The Freight Traffic Report also recommended full cooperation and coordination of transportation agencies and facilities.

It felt that all forms of transportation should be integrated by means of joint rates, interchangeable equipment, and common facilities with a view toward using each type of equipment in that field for which it was proven best. It also suggested that joint use of carrier equipment, terminals and facilities should be carried out wherever practicable under appropriate and fair user arrangements.[59]

The Coordinator of Traffic realized that some of the suggestions contained in these reports would be considered quite radical and revolutionary. However, he stated that these should not be regarded as recommendations, but rather as suggestions. He stated that modern transportation and commercial needs demand a thorough re-examination of the operating methods of the railroads, their service and equipment and of the rate structure. Such a conviction is held by most all persons who are seeking to adapt the railroad freight service to modern day business conditions and transportation requirements.[60]

In October, 1934, the Section of Car Pooling handed down its report in which it presented what it considered to be uneconomical practices in the use of railroad equipment. It recommended the adoption of a plan of car pooling in order to reduce the amount of capital required to provide railroad rolling stock and to lessen the cost of operation. Its conclusions are as follows;

1. That there is a substantial and increasing volume of empty car mileage in excess of that which is necessary in the equalization of unbalanced traffic and the orderly and efficient relocation of freight cars.

2. That the methods heretofor applied in the regulation of freight car interchange are ineffectual in the avoidance of these unnecessary and wasteful movements.

3. That the defects in methods are basic and cannot be remedied without fundamental changes in the regulations.

4. That the coordinated operation of interchange freight cars offers the best practical solution for the correction of existing faults.

5. That the pooling of freight cars would immediately affect one of the principal benefits claimed by those who urge railroad consolidation without waiting for the final determination of the major features of such consolidation.[61]

The recommendations made in the car pooling report were that all railroad box cars and other equipment as needed should be added to the general pool, with the ownership of such equipment still remaining in the hands of the original owners. It also suggested that the ultimate object of the pool should be the ownership of the equipment by the pool, and that the pool should be equipped to make all necessary repairs to this equipment and should be able to meet the needs of all the carriers. The pool was to be controlled by the Association of American Railroads and was to maintain the cars in suitable condition for operation, distribute cars equally as needed to all the carriers and operate replacement and retirement in such manner as to always have an adequate supply of cars for all demands. The pool was to collect a pro-rata rate from the carriers for all car repairs, and the rental was to be based upon the per-diem rate and the mileage basis in sufficiently large rates to reimburse the original owner for the capital cost and

service of the car. It was suggested that a central office be set up to distribute cars throughout several districts, and that the district managers allot cars to the railroads in their districts and the railroads were to have the power of distributing cars among the divisions of their own lines, as at present.[62]

As can readily be seen, these were all far reaching recommendations. Had they all been adopted, the entire complexion of the transportation system in the United States would have been changed. When the Coordinator of Transportation submitted these suggestions to the Regional Coordinating Committees of the carriers, large differences of opinion developed immediately. Furthermore, it was not even possible for the Association of American Railroads to agree with the carriers' Coordinating Committees. The railroads did not accept the ideas presented because they were objectionable to their conception of free competition. Many of the carriers would have been willing to accept the suggestions put forth to effect the economies that would have resulted, but it is conceivable that they would have viewed them as actions merely to tide the carriers over the worst years of the depression. The carriers probably felt that it would be advantageous to them to continue to struggle to amass more traffic by means of competitive practices, pending the time when the depression should cease, and they would once again be on their feet. Nevertheless, whatever might be

the explanation, the hoped for results of the Emergency Transportation Act did not transpire. When the Coordinator ceased functioning, the suggestions and recommendations were shelved as well.

Obviously, the intention of Congress was to compel the railroads to accept such recommendations as had been made by the Coordinator. The statute gave the Coordinating Committees of the carriers the opportunity to carry out the effects of the Act, and if the Committees were unable to carry out the purposes of the law, they were to recommend that the Coordinator take such action as he deemed necessary in the public interest, if the appropriate committee of the carriers for that particular subject had proved adamant. Twenty days after the issuance off an order by the Coordinator, the order was to become effective. Any interested party, either the carriers or others that might be indirectly affected, could appeal to the Interstate Commerce Commission for a suspension, amendment or modification of the Coordination orders.[63]

No orders were issued by the Coordinator for the enforcement of his recommendations. The provisions establishing the Federal Coordinator of Transportation were the temporary part of the Emergency Transportation Act, and were in effect only three years. Had the economic conditions been of an ordinary nature, the majority of the powers given to the Coordinator would have fallen to the Interstate Commerce Commission. It would have functioned, as it ordinarily does, with the carriers

individually and with the Association of American Railroads, as regards matters of research and economy affecting railroad operation and management.

It was also suggested that other means of transportation be regulated so as to do away with injuries that might occur to transportation as a whole as a result of some type of inter-carrier competition. In its report for 1937, the Interstate Commerce Commission upheld the recommendation of the Federal Coordinator of Transportation when he recommended that the water carriers be regulated by the Interstate Commerce Commission, in order to do away with duplication of staffs, and to eliminate sources of unfair competition between the water carriers and other means of transportation.[64]

It is very doubtful whether the Coordinator or, for that matter, the Interstate Commerce Commission would have had the power and constitutional right to carry out any so far reaching program as had been suggested. Such arrangements as the car pooling would have had to be carried out by the cooperative action of the carriers. The same thing holds true for the placing of the freight traffic in the hands of one or two nationwide freight agencies. It is very doubtful whether the railroads would have given up any advantages they might have held as a result of years of savage competition, notwithstanding the existence of certain types of cooperative organizations already in existence, such as the Railway Express Service. Such cooperative and voluntary action is of doubtless advantage

to the industry as a whole. It is to be hoped that the carriers, under the press of close competition from other railroads and other means of transportation will realize the advantages of such cooperation and work toward such an end through the medium of the Association of American Railroads. While the immediate effect of the Federal Coordinator of Transport's findings may not be found to have benefited the railroad industry to any considerable extent, because of the lack of enforcement, it may result in a greater amount of inter-carrier cooperation than would otherwise be achieved in the future.

FOOTNOTES

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3. American Association of Railroads, American Railroads in Laboratory, p. 1-15.
4. Ibid., p. 20-25.
5. Ibid., p. 1-75.
6. Railroad Magazine, December, 1938, p. 66.
7. The Annals of the American Academy of Political and Social Science, September, 1936, p. 20-21.
8. Railroad Magazine, February, 1939, p. 7-31.
9. Report of the Committee appointed September 20, 1938 by the President of the Unites States, Recommendations upon the General Transportation Situation, p. 57-62.
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11. Interstate Commerce Commission, 52nd Annual Report, p.107-110.
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14. Ibid., p. 7-10.
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19. L. F. Loree, Railroad Freight Transportation, p. 479.
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22. Ibid., vol. IV, p. 3287.

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27. I. C. C., 52nd Annual Report, p. 108.

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31. Interstate Commerce Commission, 52nd Annual Report, p. 103-104.

32. F. H. Dixon, Railroads and Government, p. 107-109.

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36. Ibid., p. 411-414.

37. Ibid., p. 441.

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39. Interstate Commerce Commission, 39th Annual Report, p. 72.

40. American Bankers Association, Stop, Look and Listen, p.202-208.

41. I. C. C., 39th Annual Report, p. 72.

42. Interstate Commerce Commission, 52nd Annual Report, p. 109.

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44. Federal Coordinator of Transport, Car Service Reports, p.61-65.

45. 101 I. C. C. 513.

46. Aitchison, op. cit., vol. VII, p. 5970.

47. Coordinator of Transportation, Report of the Federal Coordinator of Transportation, 1935, p. 1-6.

48. Ibid., p.

49. Coordinator of Transport, Merchandise Traffic Report, p. 57-62.

50. Coordinator of Transport, Passenger Traffic Report, p.43-45.

51. Ibid., p. 46-48.

52. Ibid., p. 48.

53. Coordinator of Transportation, Report of the Federal Coordinator of Transportation, 1935, p. 36.

54. Railway Age, June 15, 1935, vol. 98, p. 38-39.

55. Coordinator of Transport, Merchandise Traffic Report, p. 5-28.

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57. Ibid., p. 52-79.

58. Ibid., p. 43-49.

59. Ibid., p. 128-300.

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61. Coordinator of Transport, Report of the Federal Coordinator of Transportation, 1934, p. 56-105.

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64. I. C. C., 51st Annual Report, p. 105-106.

CHAPTER VIII

RAILROAD LABOR

The most interesting phase of the entire railroad situation is that of the carriers' relations to the Government in respect to labor. Railroad companies were brought into existence in order that they might carry out the services of transportation for the public welfare. Their performance was made possible only by the investment of monies and the employment of labor. In both matters the railroad companies are closely controlled by the Government. For a long time, the investment angle of the carriers was much more closely controlled than was its policy toward labor. However, since 1920, under the Interstate Commerce Commission, the position of railroad labor has greatly improved and, of recent years, increased in scope and definition.

The position of labor is of prime importance to the railroad companies and to the country as a whole because of the huge number of persons engaged in this type of work. Notwithstanding the other means of transportation which have grown in recent years, the country still depends to a vital extent upon the services of the railroad companies and their employees. In 1920, over two million persons were employed by the railroads. Since that time, there has been a drastic drop in the number of persons employed by the railroads, because of the rise of competitive types of transportation; because of labor

saving methods and equipment; and because of a severe and long depression. In 1936, there were 1,065,970 men and women employed by the railroads. These persons received total wages amounting to $1,848,498,000. at an average hourly rate of 69.1c and a yearly average of about $1,734. In 1937, there were 1,114,663 persons employed by the Class I roads of the United States, with a payroll of $1,985,446,718, and a partial estimate for 1938 gives 940,000 persons employed at $1,737,000,000. The lowest point of railroad labor was reached in 1933 when only 971,196 persons found employment with the carriers at a total wage of $1,403,840,833. The number of employees rose to over a million in 1934 and fell back to 994,000 in 1935. Since that time, it has stayed well over a million, and probably will continue at that point for some time to come.[1] These figures have been given to illustrate the large part the railroad workers play in the total of American labor. They are one of the largest and most important labor blocs in the United States.

The measure of importance of the railroad employee does not lie with the numbers employed in this type of activity, but rather with the extensive provisions made by the Government for the rapid and peaceful settlement of all labor disputes arising in this connection. In 1894, there was a threatened country-side strike averted only by the action of President Cleveland. The paralysing effect of a railroad tie-up was once again brought home to public conscience by the threatened strike in 1916. This strike was averted only because of the

passage of the Adamson Act, by Congress, at the urgent request of President Wilson.[2] Today, conditions are somewhat different; the country no longer depends upon the railroads as the only source of transportation. Nevertheless, even with the good system of roads and highways, and with the wide use of automobiles and motor carriers, there would be much hardship were there any tie-up in railroad transportation. If the railroads should cease operation for any length of time, food and other essentials would rapidly become scarce in certain sections of the country and there would be large industrial losses accompanied by unemployment and consequent suffering among the laboring classes.

The relation of the Government to railroad labor extends throughout the fields of working conditions and wages. This has been the main direct purpose of the Governmental relation to the carriers. In the 1938 Interstate Commerce Commission report the pay roll chargeable to operations was 72.89%.[3] Thus, in adopting a policy of governmental regulation of railroad labor, it is necessary to consider the relation of wages to revenue and expenditures as well as to the attainment of abstract ideals of social standards and employment.

Although railroad unions had existed prior to the World War, only a minority of the railroad employees were members of these organizations. When the Government took over the operation of the railroads in 1917, all groups and classes of railroad workers were encouraged to organize.[4] The Director-

General of the Railroads established a Division of Labor as one of his offices, and appointed the Chief of the Brotherhood of Locomotive Firemen and Enginemen as its head. At the start of Government operation, there was a pending demand for increased wages on the part of two railroad unions. This was readily understandable in the light of increased living expenses and high wages paid by the war-time industries. The Director-General appointed a Railway Wage Commission. After surveying the facts, this Commission recommended increases in salary for all persons receiving less than $250. per month. These recommendations were promptly carried out with some larger increases for the shopmen and common labor. He extended the eight hour day to all railroad workers, instead of just to train operatives as had been established by the Adamson Act in 1916.[5]

The Wage Commission also suggested that a Board of Railway Wages and Working Conditions be appointed to investigate and report to the Director-General the conditions of wages and wage policies. A Railroad Adjustment Board was also established, by the Director-General, for each of the four different groups of employees.[6] These Boards consisted of equal representation from the railroad employees and employers. It was agreed that any disputes arising out of wage schedules or working conditions that could not be adjusted by direct mediation were to be submitted to these Boards. It is interest-

ing to note that the Boards were successful in practically all the thousands of disputes that came up for hearing before them. It is conceivable that the Boards were very successful in their attempts at mediation during the first year of their existence, because of the desire of all concerned to do nothing that would, in any manner, hamper the prosecution of the war. However, as Government operation wore on, and the war came to a close, there was a growing spirit of discontent and a demand for higher wages on the part of labor. This spirit was held in check only by the assurance that the wages would be given prompt attention, and carrier rates would be adjusted so that they would be able to pay higher wages just as soon as the railroads were returned to private management.[7]

Because of the policy carried on by the Railroad Administration during the War, the membership in railroad unions greatly increased. Since the World War, about three-fourths of all railroad workers have become members of the unions. Practically all of the men employed in the higher and more technical positions of the railroads are union men. The membership is low in the fields of shop and track laborers and clerical staff, due to the seasonable nature of the work and the comparitively low wages.[8] Since 1932, the positions of the railroad unions have been greatly strengthened and they have gained greater influence in the shaping of wages and conditions of employment and of governmental legislation. An organization

has been formed in Washington, D. C., known as the Association of Railway Labor Executives. This organization consists of the heads of several of the railroad brotherhoods and unions and speaks for all the unions in negotiations with the carriers regarding general wage scales. It also concerns itself with all congressional legislation affecting railroad labor. We have but to look to the provisions of the Emergency Railroad Transportation Act of 1933, the Railway Labor Act of 1934, and the Railroad Retirement Pensions Act of 1934 to see the effectiveness of this organization in promoting favorable railroad labor legislation.[9]

The Railway Labor Act of 1926 had much to do in the strengthening of the national unions as representing all railroad labor. This Act provided that the funds of no carrier could be used in the maintaining of, assisting, or contributing to any labor organization, labor representative or collective bargaining. It effectively legislated against the existence of the company union. It further stipulated that the Adjustment Board created by the Act was to consist of thirty-six members, eighteen to be selected by the carriers and eighteen to be selected by national labor organizations. However, this does not prevent the employees of a railroad from having an organization of their own, with committees composed of representatives of employees and employers for the conduct of negotiations regarding working conditions and other matters concerning which differences may arise. The representatives

for the employees on such a committee need not be employees of that particular carrier, but where the company union has been functioning to the satisfaction of all, the employees will continue to select their own representatives, rather than those persons provided by the national unions, for negotiations with their own employers. Although this Act was designed to prevent the railroad companies from fostering and maintaining company unions as opposed to national unions, Section 3 of this statute provides that companies would not be prevented from negotiating directly with their employees by means of mediation boards, providing the persons are appointed to serve on such boards in accordance with the provisions of the statute. However, in the case that either party to the system becomes dissatisfied with the arrangements, it is possible for them to apply for relief to the Adjustment Board.[10]

It is also possible for a railroad to establish a board of adjustment by agreement between the railroad company and the appropriate official of a national union of which the employees are members. In May, 1935, there were eight such boards on the Pennsylvania Railroad. These boards represented 100,000 men, about 85% of the total employees of the carrier.[11] One of the system boards was created by an agreement between the road and the Chief of the Brotherhood of Railroad Signalmen of America, and represented 3,000 Pennsylvania Railroad signalmen, maintainers and helpers. The eighth system board was

established by agreement between the Pennsylvania Railroad and the representatives of the dining car stewards on the line.

Wage standards are fixed on a country-wide basis by agreement between the carriers and the national labor unions. Changes in these agreements are made by negotiations between the national labor organizations and the railroad companies of the whole, or any part of the country, depending upon the extent of issue. If these methods fail, the governmental agencies of mediation and arbitration are called into practice. In addition to the more widely publicized country-wide agreements, there are many agreements between a single railroad system and its own employees who are members of a local union. A case in point is that of the aforementioned Pennsylvania Railroad and its several types of employees. Having once determined the wages and working conditions, whether the agreements are on a country-wide basis or purely local in scope, it is necessary that they be applied. Their application may give rise to many differences of opinion, grievances, and disputes. The National Adjustment Board now has jurisdiction over such matter. This Board, set up by the Act of 1934, is composed of an equal number of representatives of employers and employees and is subdivided into four divisions and into various regional boards.[12]

The decisions of this Board are binding upon both parties of the dispute. However, should the decision contain a money award, it is only binding upon the carrier.[13]

It is apparent from what has gone before, and from the present time, that the evident purpose of recent congressional legislation has been to make the national unions the chief and controlling mechanisms of railway labor in negotiations with the carriers for the determination of wages and the adjustment of disputes.

At the end of the Government operation of the railroads, the Transportation Act of 1920 was placed in force. This Act created a Railroad Labor Board for the adjustment of disputes between railroad workers and employers arising over wages and working conditions.[14] The first decision that this Board was obliged to make was one which had been plaguing the Railroad Administration throughout the last months of its operation. The Board gave its first consideration to wages and granted the employees the increase in pay for which they had been agitating for more than a year. In granting the pay increases of 1920, and in reducing the wages to a certain extent in 1921, the Board had treated with all the railroads collectively, and its decisions were felt by all railroad employees. The working rules established during the period of Government operation remained unchanged until the Board decided that they should be terminated by a decree handed down on July 1, 1921.[15]

When the Board handed down this decision, they called upon the railroads and the employees to hold conferences and to inform the Board whether new working agreements could be reached. The Board would promulgate its own rules if no others were satisfactory. In order to help the local confer-

ences, the Board formulated a list of 16 principles which were, in effect, a code to which all agreements must conform.[16]

The Labor Board was relying upon a clause in the Transportation Act of 1920 which stated that each carrier must attempt to fix standards of working conditions for its employees by direct conferences with those employees. The clause further stated that if no reasonable agreement could be reached, the case was then to be submitted to an adjustment board. These boards were to result from the voluntary action of the carriers and the organizations of the employees.[17] They were to be either regional or national in scope and were to consist of an equal number of representatives of the carriers and the workers. The purpose of the statute was to have disputes reach the Railroad Labor Board only upon appeal from one of these regional or national adjustment boards. The statute did not work out as planned as the adjustment boards were not established. The unions wished to continue the favorable working agreements obtained during the period of Government operation, and the carriers did not approve of adjustment boards that were to consist of representatives of just the carriers and labor. What the railroads desired was in the nature of boards of arbitration rather than mediation, as they desired representation on a tri-partite basis, with the public taking the third corner. As a result of this deadlock, the Railroad Labor Board became burdened with a mass of material which framers of the statute expected would be settled by the interested parties through

the medium of the adjustment boards.[18]

On the other hand, the carriers were just as insistent that the working rules established during the governmental operation period be discontinued. The relation of the carriers and the several classes and organizations of train service employees had been worked out before the War, and they were not a matter of controversy. However, this was not true of the relation of the carriers to other crafts and classes of employees, as the relation there had only been established through the efforts of the United States Railroad Administration for the duration of the War. Five of the agreements had been formulated the latter part of 1919 and the early months of 1920, and three of the five agreements had been made after the President had issued his proclamation stating that the railroads were to be returned to private operation. The carriers maintained that working rules should not be national in scope, but that they ought to conform to local conditions. They further felt that the rules set up by the United States Railroad Administration were unduly burdensome. These rules not only fixed the length of the day, the time when the work was to start and stop, and the payment for overtime; but some of them even went so far as to provide for the payment of time not worked, limitation of piecework, the restriction of apprenticeship and to so classify crafts that it became necessary for several men to do different parts of a task that might be

performed at less cost by one man.[19]

When the national agreements drew to a close, it became the practice of many of the employees to negotiate directly with the individual carriers. On some railroad systems the non-service workers had their own company unions which represented them in negotiations with the carrier. For the most part, the negotiations of working rules were carried on by the national unions with the carriers, sometimes with the individual railroads and sometimes with territorial groups of carriers. Following the reduction in wages of 1921 and 1922 and the refusal of the Railroad Labor Board to continue to enforce the national agreements as to working rules, the unions attempted to avoid bringing their problems before the Board.[20] Since both the carriers and labor were dissatisfied with the Board, they decided to return to the type of mediation carried on before the World War. Thus, the carriers and the labor leaders agreed upon and drafted a bill that was adopted by Congress in 1926.[21] This Act abolished the Railroad Labor Board and created a Board of Mediation. The Railroad Labor Act was amended and supplemented by the Railroad Labor Act of 1934. This Act was more or less a return to the type of legislation effected by the passage of the Newlands Act of 1913.[22]

The Act of 1926 provided that disputes should be settled by conference of the interested parties. It further provided that boards of adjustment be established by voluntary action

of any carrier and its employees or any group of carriers and their employees, and that these adjustment boards were to be given jurisdiction over employment grievances and over the meaning and application of existing agreements, but they were not to have jurisdiction over rates of pay or working rules. It created a board of mediation of five men who were to be chosen by the President. This board was to act on its own initiative in an attempt to settle, by means of mediation, disputes arising from wages or working conditions and matters that the adjustment boards were not able to settle. Should mediation fail, the board was empowered to attempt to persuade the disputants to submit the question to a board of arbitration. The Act prescribed the manner in which such a board was to be appointed, the procedure to be followed by the board, and that the decision reached was to be filed with a district court of the United States. These decisions were to be binding upon the parties concerned, unless the decision should be suspended by the court upon purely legal grounds. In case the Board of Mediation was unable to bring about a settlement of the dispute by mediation or by persuading the parties to submit to arbitration, and if the case would seem to threaten interstate commerce, the board was to notify the President who was authorized to appoint an emergency board which was to make an investigation and report to him in thirty days, the disputants, meantime, being enjoined not to make any

change in the status quo, except by mutual agreement, for the thirty days during the action of the emergency board and thirty days after the handing down of the decision. Although the decision reached by the emergency board was not enforceable by law, it was hoped that the prevention of a strike or lockout for sixty days and the weight of public opinion accompanying the findings of an impartial board would bring about an accord between the disputants.[23]

While business was prosperous, as it was through most of the decade ending with 1930, there was little labor unrest since wages and working conditions continued to rise with business activity. The railroad employees were contented as their strong labor organizations were able to adjust wages and working conditions most satisfactorily by carrying on negotiations with the individual carriers.[24] When it became apparent in 1929 that we were headed for a long and protracted business depression, the railroad unions began to combine more closely than they had throughout the preceding decade. This took place with increasing rapidity as business conditions grew rapidly worse, and it became more apparent that the railroads would necessarily decrease the number of their employees and that there would be great difficulty in attempting to maintain the general wage scale. In 1931 and 1932, when the temporary wage reduction of 10% was adopted, the railroad unions had already begun to present a strongly united front. Here, as they were in the restoration of the 1932 wage scale in 1933

and 1934, the employees and their 21 unions were represented by the Railway Labor Executives Association.[25]

It is well that we consider the position of the Emergency Transportation Act of 1933 and its effect upon labor at this time. Most of the labor regulations of this bill are embodied in Section 7. These provisions were not part of the original document. Joseph B. Eastman, the man who became Federal Coordinator of the Railroads, as a result of the Act of 1933, states in the report made to Congress in January 1935; "As first proposed, the Emergency Transportation Act, 1933, had comparitively simple purpose. The thought was that the railroads were wasting money by undue competition and by the inability to get together for a common good. They were enjoined to cooperate in avoiding waste, and to further this end, a coordinator was appointed with power to require action when necessary".[26]

In order to carry out the purposes of the bill, three regional carrier committees were provided to help the Coordinator. While the bill was still under consideration, the Railway Labor Executives Association prevailed upon Congress to include what later became Section 7 of the law.[27] The first paragraph of this section provided for a labor committee for each regional group of carriers. The members of these committees were to be chosen by the national railroad labor unions. The Coordinator was also required to give notice and

to confer with these committees before taking any action affecting the interests of the employees.[28] As can be plainly seen, this once again placed the national unions in a very strategic position. They were able to exercise as much control over the government policy concerning the railroad laborer as they had immediately following the close of government operation of the railroads after the War.

However, the most significant section of the Emergency Transportation Act of 1933, as affecting labor, falls in the second paragraph of Section 7, in which it is provided that

> "The number of employees in the service of a carrier shall not be reduced by reason of any action taken pursuant to the authority of this title below the number as shown by the payrolls of employees in service during the month of May, 1933, after deducting the number who have been removed from the payrolls after the effective date of this Act by reason of death, normal retirement, resignation, but not more in any one year than 5% of said number in service during May, 1933; nor shall any employee in such service be deprived of employment such as he had during said month of May or be in worse position with respect to his compensation for such employment, by reason of any action taken pursuant to the authority conferred by this title."[29]

The full import of this paragraph may be readily understood when it is realized that any action taken on the part of the carriers to reduce their expenditures and effect certain economies in operation by the reduction of duplicated services would necessitate the laying-off of a certain number of employees. The Coordinator stated in one of his reports that the labor provision of the Act of 1933 prevented much actual accomplishment in the elimination of waste.[30]

Since the Emergency Act of 1933 was passed while the problem of unemployment in the railroad and in other industries was acute, it was only natural that the labor leaders sought to prevent more workers from being thrown from their jobs. There were two considerations that had been overlooked. It was the aim of the emergency law to assist railroads to reduce their expenses and enable them to gain more traffic, and thus use more workers as their business and prosperity increased. It is impossible to determine whether the Act would have worked as its framers had hoped, namely: to reduce operating expense and to increase traffic. It is quite clear that the ultimate interests of the employees were not furthered by the inclusion of provisions in the Act that foredoomed to failure its successful operation. Although not then appreciated, as time went on the diliatory effects of these provisions became clearer to the railroad union leaders, so that they asked Congress to discontinue the labor provisions of the Act after June, 1936.[31]

This decision was reached after an agreement was struck between the Association of American Railroads and the Railway Labor Executives Association in the Spring of 1936, providing for compensation to railway employees displaced as a result of railroad consolidations made in order to effect economies. In the terms of this agreement, which is to be in force until 1941, the interested employees are to be given 90 days notice of the intended consolidation and the employees who are to be

displaced are to be allowed a renumeration equal to 60% of the wages they had been receiving. This allowance is to continue for periods ranging from six months for persons in service from one to less than two years and up to 60 months for persons who have beeh employed for 15 years and more. If he so desires, the displaced worker may take a lump sum renumeration ranging, according to length of service, from three to 12 months. Persons who are required to change their residence, as a result of the consolidations, are compensated for expenses incurred as a result of the change.[32]

Three other paragraphs of Section 7 of the Act of 1933 gave the Coordinator the right to establish regional boards of adjustment and the authority to require the railroads to compensate workers for losses acquired because of the transferance of work from one locality to another.[33] The first of these provisions was nullified with the passage of the Railway Labor Act of 1934. The law also stipulated that all carriers, even though they be in the hands of the receivers, trustees or judges, as well as private ownership must comply with the provisions of the law as set up in the Railway Labor Act of 1926 and with Section 77 of the Bankruptcy Act of 1933.[34]

In 1934, a supplementary law was passed to the Railway Labor Act of 1926. This new law has come to be known as the Railway Labor Act of 1934. The purpose of the new law was to avoid any interruption to commerce and to agencies engaged in

this endeavour; to guarantee the right of railroad workers to engage in free association and to join labor organizations; to allow complete freedom to carriers and workers in the matters of organization, in an effort to carry out the purposes of the Act; to arrange for the prompt and orderly settlement of all disputes arising from rates of pay, working conditions or rules, and disputes arising from interpretations and applications of these same factors.[35]

Although the Act of 1926 provided successfully for mediation and arbitration, it had neglected to provide for disputes arising from differences in interpretation and application of agreements concerning rates of pay, rules or working conditions. This was as a result of the leaving of the establishment of adjustment boards to voluntary action of carriers and employees. The original Act had not created a national board with definite authority to act upon and decide disputes arising from interpretation of agreements as to working and wage rules. Thus, there had not been sufficient provisions for the settling of the many disputes that inevitably arise in the relations between employer and employee. The Act of 1934 attempted to fill this gap by providing for the settlement of railroad labor disputes by means of the National Railroad Adjustment Board.[36] This board had divisions which were similar in many respects to the railroad adjustment boards set up by the United States Railroad Administration during the period of government operation which the railroad labor unions sought unsuccessfully to retain

after the Government returned the carriers to their former owners for further operation. Just how successful this Board has been in the settlement of disputes will be seen in later paragraphs of this chapter.

The National Railroad Adjustment Board, as has been stated, is composed of 36 members, 18 of whom are chosen by the carriers and 18 of whom are slected by the national railroad labor organizations. Section 2 of this Act sets up the provisions that must be complied with in order that a labor union may be joined and recognized as one national in character. This section also guarantees to the employees the right of joining the union of their choice and the right of collective bargaining. The law further prohibits the carriers from interfering or attempting to coerce the election of labor representatives. This statute not only places the national labor unions in a position of strategic importance, as far as bargaining power and the choice of representatives for the National Railroad Adjustment Board are concerned, but it also attempts to do away with the company unions as agencies of collective bargaining. It does this by means of prohibiting the carriers from using their funds to maintain, assist or to contribute to any labor organization, labor representative, or other agency of collective bargaining. The Labor Act of 1934, as the Act of 1926, makes it the duty of the carriers and their employees to make and maintain agreements as to rates of pay,

rules and working conditions. They are further enjoined to settle these disputes, whenever possible, in conferences between the management and the worker. Such conferences are to represent the carrier and the workers who will be affected by the outcome of the dispute.[36] Although the representatives to such conferences may be workers of the particular carrier or carriers involved, it is more likely that they will be officials of the national union. The former status of the organizations of the employees of a single railroad company, as agencies for the selection of men to represent the worker in conferences with the managers, are being taken by the boards of adjustment. Such a case may be found in the Pennsylvania Railroad and its boards of adjustment. The key positions of the boards are held by officials of the national unions of which the employees are members.[37]

The National Railroad Adjustment Board is composed of four divisions, each of which is practically autonomous as the proceedings of each is independent of the others. The 36 members of the board are allocated to each of these four divisions. The first division has jurisdiction over disputes involving train and yard service employees. This group contains engineers, firemen, hostlers and their helpers, conductors, trainmen, and yard service employees. The second division has jurisdiction over machinists, boilermakers, blacksmiths, sheet metal workers, electricians, car cleaners, power house

employees, and railroad shop laborers. The third division consists of station, tower and telegraph employees, train dispatchers, maintenance of way men, clerical employees, freight handlers, express man, signalmen, sleeping car conductors, sleeping car porters and maids, and dining car employees. In each of these divisions there are 10 men, five of whom are appointed by the carriers, and five of whom are elected by the national labor organizations. The fourth division has jurisdiction over employees of carriers directly or indirectly engaged in transportation of passengers or property by water and all other persons whose jurisdiction is not given over to the first three divisions. This division consists of six persons, of whom three are appointed by the carriers and three elected by the national labor unions.

A set procedure has been worked out and is included in the statute. In case a dispute arises regarding the interpretation or application of working conditions, rates, or rules, and if it is not adjusted by a conference of the interested parties, a petition may be filed with the appropriate division of the Adjustment Board. This petition must be accompanied by a full statement of facts and supporting evidence. A hearing is then held either before the division, or by members designated by the division, or by a temporarily established regional adjusting board organized by the division. If the entire division, portion of the division, or

regional board, depending on which is sitting on the case, agrees about the findings to be made from the dispute, a decision is handed down. However, should the members fail to agree, a neutral third person is chosen by the members to act as referee. If they can't agree on a suitable person, the matter of the referee is then submitted to the Mediation Board. The findings of the divisions are binding upon all parties of the dispute. In case of a money award, this finding may only be held binding against the carrier. A majority of the members of a division may make a money award. Should a dispute arise regarding the exact meaning of the award, the matter may be resubmitted to the division for its interpretation. Should the carrier refuse to obey the decision of a division, the interested parties may bring suit against the said carrier in the United States District Court. The statute does not provide what shall be done in the event of a labor union refusing to obey the dictates of the division. Since the unions are not incorporated, they cannot be sued. Thus, presumably an order running against a union could not be enforced by resort to the courts.

It is provided in the Act of 1934 that the several divisions of the Adjustment Board maintain headquarters in Chicago, Illinois, and that they shall make annual reports to the Mediation Board. In the Railway Labor Act of 1926 five men were to make up the roster of the Mediation Board. In the Act of 1934 three men were substituted for that body. These

men were also appointed by the President with the approval of the Senate, as were their predecessors. The services of the Mediation Board are called into play when a dispute concerning changes in rates of pay, rules, or working conditions cannot be settled by the parties in conference, when a dispute is not referable to the National Railroad Adjustment Board and is not adjusted in conference between the interested parties, and when a conference is refused. If the Mediation Board believes a state of labor emergency to exist at any time, it may proffer its services, and if a settlement of the dispute is found to be impossible by means of mediation, the Board is to attempt to induce the embattled parties to submit their problem to arbitration. The Board of Arbitration is then selected and the procedure follows according to the rules laid down in the Railway Labor Act of 1926.

With the passage of the Labor Act of 1934, Congress attempted to provide an agency for the authoritative adjustment of grievances and disputes as to the meaning and application of agreements regarding rates of pay and working rules. The Mediation Board was set up with the idea of stabilizing the relations of the railroad worker and the employer. In order to further enable the Board to do this, all carriers were to file a copy of the contracts between employer and employee regarding wages, rules and working conditions. If no class of employee formerly had a contract with the carrier, the carrier was to inform the

Mediation Board of that fact, and it was also to file a statement of the wages, rules and working conditions of that particular type of employee or craft. It was also provided that should any change in wages, rules, or working conditions take place, or should any new contract be formulated between employer and employee covering these topics, the carrier is enjoined to file a copy of the new or revised contract with the Mediation Board within thirty days after the new contract has been made effective.[38]

The activities of the various organizations operating under authority of the Railway Labor Act of 1926, as amended by the Railway Labor Act of 1934, will become more clear if a few concrete examples of their workings and decisions are cited. In the case of the Brotherhood of Locomotive Firemen and Enginemen, et al. vs. the Chicago Great Western Railroad Company, a dispute arose regarding the non-payment of penalties and lost wages by the carrier as required by three decisions rendered by the First Division of the National Railroad Adjustment Board. These penalties and lost wages aggregated some $40,000. The dispute had mainly to do with compliance with agreements established since the World War, and having the same status as wage standards. The National Board, upon hearing the case at issue granted the claims unanimously. In the meantime, the carrier engaged in a series of bankruptcy proceedings. When the decision was handed down, the stockholders

of the carrier petitioned the court that the carrier not be allowed to pay the award, and court so ordered. Whereupon, it became proper for the unions to attempt to seek relief from the United States District Courts. Since there are more than two thousand such cases pending before these courts, and since this Act attempts to minimize litigation, other means of relief were sought. The unions were unwilling to forego the payment of the award, and they were unwilling to carry the case into court, so that only one means of redress was left open to them, whereupon they called a strike vote. A condition of emergency was thus found to exist, and it became in order for the President to appoint an Emergency Board upon the advise of the National Mediation Board. This Board sat upon the case and found the claims of the unions to be just. It further stated that a carrier is responsible for such claims even though it is in the process of reorganizing and is thus under the jurisdiction of the courts. The Emergency Board secured the rescinding of the previous court order forbidding the payment of the award. Following the vacation of that order, a further conference was held between the carrier and the employees and a full and amicable settlement was reached.[39]

Many times cases come before the various boards, created by the Acts of 1926 and 1934, arising out of jurisdictional disputes between the various railroad unions, and are not

directed toward the carrier at all. These cases arise mainly through failure to carefully observe the explicit provisions and the spirit of the Railway Labor Acts. Toward the close of one of the hearings of an Emergency Board, sitting during April, 1937, a national officer of one of the four major railroad unions was heard to remark, "this is not a strike against the Southern Pacific Railroad, it is a fight between these organizations".[40] While it is doubtless true that the Southern Pacific Company and many others could avoid many such disputes by more closely centralizing their handling of grievance claims, the statement was still very much to the point. The unions owe it to themselves, to their members, and to the carriers and public to settle these questions without threatening to disrupt interstate commerce and the traffic of the carriers by means of a strike.

Such a case was that of one W. S. Orr in service as a brakeman on the Western Division of the Southern Pacific Railroad. The Brotherhood of Railroad Trainmen threatened to call a strike against the railroad because of a jurisdictional dispute with the Order of Railway Conductors. The Trainmen's Union claimed that Orr was assigned as a brakeman in pool service and eligible for the next call as an extra conductor. While awaiting a call as an extra conductor, Orr was called for service as a brakeman and a junior was used in his place. Under these circumstances, and according to an agreement of the carrier with the Trainmen's Union, the carrier became

liable to pay Orr for a 50 mile runaround. On the other hand, the Order of Railway Conductors claimed that the payment was invalid since the Conductors' agreement governed any failure to call an extra conductor, and that the Conductors' Union had an agreement with the carrier for lay-over service into which Orr would not fall. A regional board having failed to settle the question, it was referred to the National Railroad Adjustment Board. It was still not settled to the satisfaction of the Trainmen's Union, whereupon a strike vote was called. Since a state of emergency was found to exist, the President appointed an Emergency Board, and the question was finally settled.[42]

The question in any piece of legislation of this type is always one of constitutionality. However, in this instance, the Labor Acts were upheld by a decision of the Supreme Court handed down on March 29, 1937, in the case of the Virginian Railroad Company vs. Systems Federation No. 40. In this case, the Virginian Railway attempted to claim the exemption of backshop employees from the jurisdiction of the Railway Labor Acts on the basis that these persons were not engaged in interstate Commerce. However, the court found that these employees are so closely related to persons engaged in the conduct of interstate commerce that they were to be regarded as part of them. The court stated that "all taken together fall within the power of Congress over interstate commerce, which extends to such regulations of the rail carriers to their employees as are reasonably calculated to prevent the interruption of interstate commerce by strikes and attendant disorders".[42]

During 1937, there were many demands made by the employees for higher rates of pay. Two groups of employees filed demands for pay increases early in 1937. The transportation group, consisting of train, engine men, and yard service men filed a demand for a 20% increase, while the bulk of the remaining organizations filed demands for a 20 cent per hour wage increase. Extensive negotiations were carried on, and the matter was finally settled by mutual agreement after the National Mediation Board insisted that the matter be handled across the table. Prior to the settlement, a strike vote was called in both groups, and the unions threatened to go out on strike unless the matter was settled according to their demands.[43]

If the strike had really occurred, the President, in order to circumvent the matter, would have been obliged to call for an Emergency Board, under the terms of the Railway Labor Acts. Since neither side cared to carry the matter that far, and since both sides were willing to compromise their differences, the matter was settled by means of ordinary conference. Accordingly, the carriers settled with the non-transportation group for an increase of five cents per hour, and with the transportation group at 5.5 cents per hour per 8-hour day.[44] These increases had been allowed more as a result of the improved business conditions apparent in 1937 than because of the willingness of the carriers to allow wage increases. Scarcely had these arrangements been completed, before a

recession in business again became evident. Net railway earnings and carloadings fell sharply during the latter portion of 1937, and they continued to decline through the early months of 1938.[45] In an effort to offset this falling income, the Class I railroads requested the Interstate Commerce Commission to grant them the authority to increase freight rates and all charges by 15%. Among the grounds presented for this proposed rate increase was the rise in railway operating expenses due to a rise in the cost of materials, supplies, wages and the new taxes imposed upon the carriers as a result of the Federal unemployment insurance and the Railway Labor Retirement Act. The Interstate Commerce Commission finally granted a rate increase of 5% after carrying on extensive hearings.[46]

As a result of all of these factors, the carriers set up a committee which became known as the Carriers' Joint Conference Committee which was to explore the possibilities of reducing operating expenses by reducing wages. A meeting was held in Chicago, Illinois, on March 16, 1938 and it was decided, after surveying the decline in traffic and the increase in operating costs, that the carriers would be justified in asking for a reduction of 15% in the wages of railway labor. Pursuant to this decision, a committee of railroad presidents conferred with the executives of the railway labor organizations in Washington. The latter, although willing to help the railroads in their presentation of relief requests to Congress,

were firm in their refusal to consent to a reduction in wages. A further meeting was held in Chicago toward the latter part of April, attended by the railroad presidents and the Carriers' Joint Conference Committee and it was decided to reduce wages by 15%, notwithstanding.[47]

As a result of this meeting, the carriers issued formal notice of their intention to cut the wages of certain types of employees by 15% on July 1, 1938. After preliminary negotiations, it was decided to handle the matter on a national basis, as all efforts at settlement were unavailing. Mediation was thereupon invoked but without materially helping the situation. Consequently, as required by the Railway Labor Act, the National Mediation Board requested the parties to submit the controversy to arbitration. Although the carriers were willing to arbitrate, the employees refused. The National Mediation Board then formally notified the parties of the termination of its service, thus automatically staying the original notices for an additional 30 days. The carriers then notified their employees that the wage reductions would go into effect on October 1, 1938. On September 26, having taken a strike vote, the unions informed the employees that a national strike would take place unless the notices were withdrawn. On the following day, in view of the fact that the threatened strike would seriously affect interstate commerce, the National Mediation Board advised the President that a state of emergency was

existent. The President thereupon appointed an Emergency Board to investigate and report respecting the dispute. On September 27, this Emergency Board was appointed by the President. After considering the matter for slightly more than a month, they handed down a decision on October 29, 1938, in which it was recommended that no horizontal reduction in wages be carried out by the carriers. In view of the wide and far reaching nature of this decision, it is well that some space be devoted to a more full consideration of it, for it is in this that we find the crux of the present railroad situation.

The serious situation of the railroads was made apparent in March, 1938, when a three man Interstate Commerce Commission report was submitted to the President providing for immediate relief and a long term program for the railroads. Although this report was submitted to Congress with appropriate remarks and additions by government officials, that august body neatly sidestepped the issue by adjourning.

The present railroad situation must be viewed in terms of the past 17 years. During that time, between the years of 1921 and 1930, total operating income stood at about 6 billion dollars per year. In 1930, however, income dropped over a billion dollars, and by the year ending June, 1938, it had fallen to $3,715,604,013. On the other hand, total operating expense had only fallen 1.1 billion in 1921, one-half billion in 1931, 667 million in 1936 and 361 million by June 30, 1938.[48]

From the standpoint of the individual system in 1929, 95.75% of the railroads were operating with a net income, in point of mileage, whereas from 1931 to 1937 the ratio never went above 61%, and by June, 1938, it had fallen to 13.17%. Trustees and receiverships rose from 9% in 1921 to 31% in July, 1938. Naturally, all of these things have a very dilatory effect upon railroad securities and the obtaining of railroad loans. Although the outstanding factor in the figures cited has been one of business depression, there are other factors affecting the railroads as well.

Chief of these has been the rise of other and new types of competitive carriers. The carriage of mail and passengers -- a profitable source of revenue -- has increased tremendously as far as the air lines are concerned. In addition to this, the carriers now stand competition from motor transport, automobiles, water lines and pipe lines.

Changes and relocation of industry have made further inroads upon railroad revenue. The substitution of hydro-electric for carbo-electric power is but one of many examples. The use of interstate pipelines for the transportation of natural gas, and the consequent slackening of the use of coal is but another example in the chain.[49]

All of these items, and many others, were very closely considered by the Board. In the end, the Board was convinced that a reduction in wages would have been merely a palliative, since the root of the railroad situation could not possibly be remedied by any so superficial adjustment as a reduction

in the wage rate. The Board felt that the only way the railroad situation could be remedied would be by the Government engaging to relieve the railroads from some of their financial, and other difficulties. It was further asserted, before the Board, that wastes aggregating $1,000,000 a day could be prevented and that the pursuit of such a course by the carriers would obviate the needs for effecting savings through a wage reduction.[50]

The carriers complained that much needless expense was being heaped upon them by the unions in their attempts to urge the passage of various restrictive bills having to do with full crews, length of train and hours and various other similar legislative proposals. The employees replied that they urged the passage of these bills only because of the effects of technological unemployment. The Board believed that such questions should be answered within the industry, and that they should flow from the processes of collective bargaining between the carriers and the men and not from legislation.[51]

The Board further stated that the estimated saving of $250,000,000 that the proposed wage reduction would bring about would not necessarily go to the most deserving roads. Eight roads not entitled to consider themselves in financial straits would have benefited to the extent of 36.9% of the savings, while more than half of the total would have gone to roads not in a particularly dangerous position. Thus, while labor

might be expected to make some sacrifice for the benefit of the industry as a whole, there is little reason to penalize the labor of the strong roads for the benefit of the weaker carriers.

The Board further stated that the average weekly wage rate in the railroad industry was lower than that paid for comparable service in other industries. With rapidly declining employment in the railroad industry, with seniority rules widely observed, and with a disinclination of many workers in certain types of employment to leave the service, a larger number of men are frequently on lay-off. Thus the real wage tends to fall even below the average weekly wage. The Board stated that the railroad wages tended to lag behind advances in other industries. Since there was no concerted action on the part of other industries to reduce wages, the Board failed to see why wages should be reduced in the railroad industry.

Finally, the Board observed that hardly a more important problem faced industry today than the handling of its labor. In order to get the best cooperation from the men, it is necessary that they not be alienated. It would be foolhardy to force any such shortsighted remedy as a reduction in wages. Since the railroads are for the public and not the public for the railroads, the Board felt that any dispute such as this should have the aspect of a tri-partite agreement. Since the

railroads must depend for the existence upon both the public and labor, it would be foolish to alienate either the public or labor.[51]

The decision was handed down on October 29, 1938. This is by far the most important case that has come before the various Emergency Boards since the inception of the Railway Labor Acts. Once the decision was handed down, no further attempt was made to reduce the wages. The handing down of this decision, and the manner in which the decision was found, seemed to imply the promise of some sort of constructive railroad legislation on the part of Congress. Five months after the decision, Congress had still taken no action regarding this very important point.

During the depression, the labor leaders of the railroad unions devoted a large measure of effort toward the impossible. They furthered all types of schemes that would have certainly increased employment, but would have decreased the net income of the railroads. The most far reaching of these schemes was the proposal that railroads be required to shorten the working day to six hours, meanwhile paying the same wage scale as had been paid for the eight hour day. On the basis of the 1930 income, the Interstate Commerce Commission found that it would have increased the railroad payroll by $600,000,000, and that it would have mainly benefited those already in the higher income brackets.[52]

A further proposal would have limited all trains to not more than 70 cars or one-half mile. This proposal would have

increased employment but would not have materially helped safety, the justification for this attempted legislation. Notwithstanding the increasing length of trains, the accident rate for all trains and train services has fallen from 68.0% of accidents per million train miles in 1923 to 31.0% in 1935.[53]

One other attempt worth mentioning is that of the full crew bill which would have required at least two men on every locomotive or motor, a conductor on every light engine, at least three brakemen on every train of more than 50 cars, and a fireman, engineer, two brakemen and a conductor on every locomotive switching in or between yards. It was estimated at the hearings before the House of Representatives that these proposals would have added $70,000,000 annually to operating expenses, on the basis of 1934 traffic.[54]

To guarantee further the security of the railroad worker, the Railroad Retirement Act was passed in June, 1934. This original Act was held to be unconstitutional when it came up before the United States Supreme Court in 1935.[55] Congress immediately countered by adopting a new retirement act thought not to be in violation of the Constitution, as interpreted by the Court. The two laws enacted by Congress during 1935 have come to be known as the Railroad Retirement Act and the Railroad Employees' Excise and Income Tax.[56] The retirement law applied to employees in the service of express companies, sleeping car companies, and all railroad companies and their

subsidiaries under the jurisdiction of the Interstate Commerce Commission. Employees who became representatives of railway labor organizations were also included under this Act. However, the law avoided one of the pitfalls of the former unconstitutional act by not including among those persons, eligible for benefits from the legislation, employees who were no longer in service.[57] Congress was to appropriate the funds necessary for the payment of the annuities, and the annuities were to be paid by the disbursement division of the United States Treasury to those persons whom a Railroad Retirement Board, appointed under the terms of the Act, certified to be entitled to the payments. An excise tax was imposed upon the carriers under the terms of the Railroad Employees' Excise and Income Tax. This tax amounted to 3½% of the compensation not in excess of $300 per month paid by the carrier to its employees. A similar amount of income tax was placed upon the wages of the employees, up to $300. per month. This income tax was to be deducted from the wages of the employee each month. The carrier was then to forward the income tax and the excise tax to the Treasury of the United States. It was in this manner that Congress sought to avoid violation of the Constitution by substituting a Federal Tax for a compulsory pension levy upon the carriers and their employees.[58]

Neither the employees of the carriers nor the carriers were wholly satisfied with the terms of the Railroad Retirement Act and the Railroad Employees Excise and Income Tax Act.

Therefore, the case was carried into court and the enforcement of the Act was enjoined in June, 1936 by the Federal Court of the District of Columbia upon action instituted by the railroads. In this case, the court held that the taxing provisions of the Act were unconstitutional and further collection of fees was enjoined pursuant to the findings of the Supreme Court as of 1934.[59] The two Acts were found to have dovetailed so nicely that they were essentially the same as the law already declared unconstitutional. The taxes imposed by the Act of 1935 were not for the promotion of the general welfare, but they were secured to serve a specific end for which the funds of the contributors could not be taken without a violation of the "due process" clause of the Constitution. The Judge finally arrived at the obvious fact that "it was clearly the intention of Congress that the pension system created by the retirment act should be supported by taxes levied against the carriers and their employees." Thus, the taxing act was found to be unconstitutional, but the act setting up the machinery was left intact. The Railroad Retirement Act had already set up a Railroad Retirement Board, and this Board was functioning upon monies appropriated, for that purpose, by Congress. The Board was not only administrating the duties of the Act but it was also granting annuities out of the money granted by Congress.[60]

The situation arising out of this impasse was so confused that it became necessary for the President to request that the railroads hold a conference with the employees so that some suitable solution might be found. At the suggestion of

the President, the Association of American Railroads and the Railway Labor Executive Association held a conference. After protracted negotiations, an agreement was reached for a plan of pension legislation that would be acceptable both to the unions and to the carriers. The terms of this agreement were embodied in two bills, one of which created a Railroad Retirement System, while the other levied payroll taxes designed to provide funds to carry out the plans. These bills were enacted by Congress and were approved in June, 1937. Thus, the Third Railroad Retirement Act came into being in 1937.[61]

Under this plan there is a tax paid into the Treasury of the United States upon employee payrolls. This tax is not to exceed $300 per month for any employee, and the tax is to start at 5½% and increase gradually until it reaches 7½% at the end of 12 years. One half of this tax is to be paid by the carrier and the other half is to be deducted from the employee's wages. The pension is to be paid out of the Treasury of the United States. This measure is rendered valid by an agreement on the part of the parties in interest.[63]

The provisions of the Railroad Retirement Act were modified in several particulars, but in details rather than in principle. Administration of the Act was left in the hands of the Railroad Retirement Board provided for in the Act of 1935. The method of computing annuities, payable monthly, was also not changed from the original Act.[63]

The annuities are based upon the service period of the employee and are the sum of the amounts determined by multiplying the total number of years of service, up to thirty, by the following percentages of the monthly compensation; 2% of the first $50; 1½% of the next $100; and 1% of compensation in excess of $150. It was further provided that no compensation would be paid on incomes in excess of $300 per month. In general, annuities up to $120. per month are payable, depending upon the two aforementioned variables. Minimum annuities are also provided for employees reaching the age of 65 and with at least 20 years of service.[64]

An employee may retire when he has reached the age of 65. He may also retire when he has reached the age of 60, but he then must expect a reduction of 1/15 of annuity for each year under 65. He may continue in service after he has reached 65, but if he does, his wages will continue to be taxed although his pension will not benefit thereby.

All the roads having private pension systems turned their accounts over to the Railroad Retirement Board, and annuities accruing thereby were payable under the new system. If an employee retires and then engages in some other type of gainful work, he forfeits his annuity.[65]

Should the employee die, a moderate death benefit is paid to the widow or to the estate of the deceased. Upon making application for an annuity, it is possible for the employee to apply for a reduced annuity which would be payable during

his life and the life of the surviving widow. The present value of the annuity is then to be determined upon the basis of the combined annuity tables, with interest at 4% per annum.

It is not possible for a person to receive both the benefits due him under the Railroad Retirement Act and the Social Security Plan. The minimum annuity receivable is $20 or the full amount of the employee's compensation, if that should have been $20. per month, or less. However, in no case will his annuity be less than the amount that he would receive under Section II of the Social Security Act.

There is no maximum limit to the annuity payable, the amount being determined by the general formula by which annuities are reckoned. It has been estimated that with the retum of railroad traffic to the 1929 level, about 1,400,000 employees would fall under the jurisdiction of the Railroad Retirement Act.[66]

To the end of 1937, about 95,000 applications had been filed with the Railroad Retirement Board. It was expected that 10,000 would be found ineligible, thus leaving about 85,000 to be paid. Of these, 58,000 had been granted up to the end of 1937, leaving about 27,000 to be acted upon.

At the end of 1937, the excise taxes for the purposes of this plan accounted, on a 2 billion dollar payroll, amounted to $95,000,000, and at the end of 1938, to $115,000,000. However, the operating expenses of the carriers were relieved to the extent of $37,362,261. This was the amount payable

under the company pension plans at the end of 1936, the last year of private operation.[67]

For the most part, the labor policy engaged in by the Government has been the most satisfactory portion of its relations with the carriers. They have succeeded in practically eliminating the wasteful and injurious strike by means of the various Railway Labor Acts, and they have provided for the employees' old age through the medium of a safe and sound annuity plan. Notwithstanding the essential goodness of these things, there are still certain rough spots that must be ironed out by the Government. Not the least of these is the weakness of certain parts of the Railway Labor Acts.

In the administration of the Railway Labor Act, certain difficulties have appeared in the portions dealing with the work of the Adjustment Boards which have caused delay and unsatisfactory results.

One of the weaknesses of the present law lies in the temporary character of the referees, who are employed day by day for particular cases. The referee does not sit on the case, but is called in only in case of a deadlock in the Board. Furthermore, no record of the evidence is kept for submission to the referee, nor are the constestants even allowed to appear before him.[68]

While the railroads are strictly bound to follow the decisions handed down through the medium of the Railway Labor Acts, and the carriers are obliged to pay awards granted by

the various boards to the employees under pain of court proceedings, no provision is made for court review at the instance of the carrier. The only provision referring to court review is that referring to suits by the employees for the enforcement of awards. Rather than attempt to take these awards to the court should the carriers refuse to pay, the unions prefer to enforce these findings by means of a strike threat.[69] This was not the intention of the statute.

FOOTNOTES

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3. Interstate Commerce Commission, 52nd Annual Report, p. 28.
4. W. J. Cunningham, American Railroads, p. 19, 35, 102.
5. Ibid., p. 106.
6. I. L. Sharfman, The American Railroad Problem, p. 175-176.
7. F. H. Dixon, Railroads and Government, p. 117-118.
8. Sharfman, op. cit., p. 117-129.
9. Bureau of Information of the Eastern Railroads, Railroads and Railroad Wages, p. 9.
10. Interstate Commerce Commission, Acts Supplementary to the Interstate Commerce Act, p. 108-110.
11. Railway Age, vol. 98, p. 554; vol. 98, p. 832.
12. E. A. Lewis, Laws Relating to Mediation, Conciliation, and Arbitration Between Employers and Employees, p. 126.
13. I. C. C., Acts Supplementary, p. 110.
14. C. B. Aitchison, ed., Interstate Commerce Acts Annotated, vol. IV, p. 3381.
15. Sharfman, op. cit., p. 443-444.
16. Ibid., p. 428-431.
17. Lewis, Laws Relating to Mediation, etc., p. 12.
18. Cunningham, op. cit., p. 231.
19. Sharfman, op. cit., p. 443-447.
20. Cunningham, op. cit., p. 286.
21. Aitchison, op. cit., vol. IV, p. 3371.
22. I. C. C., Acts Supplementary, p. 108-109.
23. Lewis, op. cit., p. 126.

24. American Bankers Association, Stop, Look, Listen, p. 212.

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31. Railway Age, May 30, 1936, p. 885.

32. Ibid., p. 885-887.

33. Aitchison, op. cit., vol. VII, p. 5971.

34. I. C. C., Acts Supplementary, p. 108-110.

35. Aitchison, op. cit., vol. VII, p. 6193.

36. Lewis, op. cit., p. 126-129.

37. Supra, footnote 11.

38. Lewis, op. cit., p. 126-139.

39. Report of the Emergency Board Created February 8, 1937, March 7, 1937, p. 1-12.

40. Report of the Emergency Board Created April 14, 1937, pQ 27.

41. Ibid., p. 14-15.

42. 300 U. S. 515; 84 Fed. 641.

43. Association of American Railways, A Review of Railway Operations in 1937, p. 6.

44. Ibid., p. 6-7.

45. Association of American Railroads, Statistics of Railways Class I, United States, sheet 1; sheet 5.

46. I. C. C., 52nd Annual Report, p. 46.

47. Report of the Emergency Board Appointed September 27, 1938, October 29, 1938, p. 1-4.

48. Ibid., p. 8-9.

49. Ibid., p. 10-19.

50. Ibid., p. 19-25.

51. Ibid., p. 38-56.

52. U. S. Chamber of Commerce, Restrictive Railroad Bills, p. 3-6.

53. Association of American Railroads, The Train Length Bill, p. 1-11; Bureau of Railway Economics, Limiting the Length of Trains by Law, p. 1-15.

54. Chamber of Commerce, op. cit., p. 10-13.

55. Aitchison, op. cit., vol. VII, p. 6198.

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63. Aitchison, op. cit., vol. VII, p. 6196.

64. Ibid., vol. VII, p. 6197.

65. Ibid., vol. VII, p. 6198.

66. I. C. C., Acts Supplementary, p. 110-111.

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