

NO "BAD FAITH" SAY RAILROAD PRESIDENTS

History of Negotiations With Legislative Commission

Material Reductions In Rates Were Offered

Could Not Accept Proposition of Legislative Commission, But Suggest That Question Be Submitted To Interstate Commerce Commission, and Agree Not to Appeal From Its Decision

Hon. W. C. Dowd, Chairman, Charlotte, N. C. May 27th, 1913.

Dear Sir: We observe in the public press that, at a recent meeting of certain business men at Raleigh, you as Chairman of a committee introduced a set of resolutions, the first preamble of which is as follows:

"Whereas, The representatives of the railroads operating in North Carolina, in meeting assembled, on April 29, repudiated and failed to carry out their promises made to the governor and the special freight rate commission at the meeting held on February 26, to correct the present excessive and discriminatory freight rates."

Inasmuch as your name, in your representative capacity as Chairman, has thus become associated with the preamble and resolutions in question, we trust we may be permitted to explain to you, and through you to the important interests your committee represents, that, in our judgment, when the facts are fully appreciated, no charge of bad faith can be justly made against us.

At the outset, we must express our profound regret that the impression should prevail in the minds of any one, and especially in the minds of yourself and others associated with you, that the carriers have been guilty of any lack of good faith in their dealings with the representatives of North Carolina in regard to the important questions which have been involved in the recent negotiations with the Legislative Freight Rate Commission.

We have endeavored to live, and we believe we have lived, fully up to both the letter and the spirit of our proposition made on the 26th of February.

The proposition made, on that date, by the railroads and accepted by the Commission was as follows:

"1. The carriers, now engaging therein, will withdraw from business from the West to Virginia City points through North Carolina. This will be done, not because they consider the carrying of such business at present tariff rates as economically unsound, but in deference to the sentiment of the North Carolina public on the subject. It will be done in good faith, but as a matter of current business management with the understanding, however, that if any of them should hereafter resume such business, the State of North Carolina is to lose none of its rights as at present existing or such as it may hereafter have, in respect to such rate structure.

"2. That the carriers will, for the purpose of these negotiations, recognize the principle of making a lower proportional rate from Virginia City points to North Carolina points, than the rate now existing and will endeavor to work out with this Commission what would be such reasonable reduction, this Commission or its representatives to sit with the representatives of the carriers in the effort to arrive at what is reasonable and proper in the premises; with the understanding, however, that, although actuated by the disposition to make sacrifices to fairly meet the views entertained in North Carolina that freight rates from the West to North Carolina points are unjustly discriminatory as compared with rates from the West to Virginia City points, the carriers are confronted with the difficulty that a voluntary reduction in these rates will, under the law as administered by the Interstate Commerce Commission, doubtless, be used to measure the rates into other territory and to bring about a reduction of these last mentioned rates. Because of the smaller density of traffic in the South as compared with the Trunk Line and adjacent territory, it is impossible for the carriers to make or stand such general reduction in rates. The view of the North Carolina public can, without incurring the serious consequences mentioned as to rates into other territory, only be met under an order of the Interstate Commerce Commission directing certain reductions to North Carolina points and holding that such reductions will not affect the rates into other territory. Any agreement reached is, therefore, to be carried out by an application by the North Carolina authorities to the Interstate Commerce Commission for such an order, and the carriers will co-operate in an effort to secure such reductions as may be agreed upon between the North Carolina Commission and the carriers, provided such order of the Interstate Commerce Commission will protect them from reductions because of such reductions to North Carolina territory, in their rates to other territory; and provided, further, that if the action of the Interstate Commerce Commission shall not be in accordance with such agreement, the State of North Carolina shall not be precluded from such other action in respect thereto as it may be advised. If the Commission and the carriers fail to agree upon what would be reasonable in the premises, the North Carolina authorities may in their discretion submit the question to the Interstate Commerce Commission and the carriers pledge themselves to facilitate and expedite the hearing and determination thereof in every reasonable manner, but the State is not hereby precluded from using any other remedy or taking any other action as it may be advised.

"3. If there are any other questions with reference to the rate situation which either the said Commission or the carriers may desire to have considered, such question may be taken up and considered with a view of adjusting them by agreement between said Commission and the carriers, and if not adjusted, then the position of neither party to be prejudiced by such consideration or by anything herein contained. Any other questions not presented and agreed upon are left unprejudiced hereby.

"4. Inasmuch as this is an effort made in the earnest desire on the part of the carriers to meet the sentiment of North Carolina and to remove causes of controversy in that State, the above suggestion is made with the understanding that if, for any reason, it is not acceptable to the North Carolina authorities, or a final adjustment is not reached thereunder, nothing herein contained is to be used to the prejudice of the carriers in any proceeding that may be instituted against them, or any of them, in respect to freight rates as regards North Carolina territory."

In presenting this proposition, the spokesman for the railroads, as will appear from the stenographic report on file with the North Carolina Corporation Commission, made the following statement:

"Your Excellency, it seems to us that the only principle on which we can maintain lower rates in North Carolina than we can in other states to the South is the fact that

North Carolina is the most nearly contiguous territory to Virginia, which has these abnormally low rates, and that, therefore, the effect of that proximity may be reflected into North Carolina, whereas it could not be reflected further off."

It is difficult, of course, as there are no specifications, to appraise exactly in what respect it is thought the railroads have not in entire good faith lived up to this accepted proposition. In the absence of such specifications, we can only examine what the proposition essentially was and compare it with the action of the railroads pursuant to it.

It will be observed that the proposition consists of four paragraphs, the fourth of which shows that the three preceding paragraphs, although dealing with different features of the proposition, all constitute a single basis of adjustment and it was expressly stated that, "if a final adjustment is not reached thereunder, nothing herein contained is to be used to the prejudice of the carriers."

Let us examine then what the proposition actually contained. First: It provided that the carriers, now engaging therein, would withdraw from business from the West to Virginia City points through North Carolina.

There has never been any subsequent discussion of this paragraph, for the reason that it is fully understood that the carriers stand ready to withdraw from this business as soon as an adjustment is reached in respect to the other points, which constitute the points really at issue.

Second: It provided that the carriers would, for the purpose of these negotiations, recognize the principle of making a lower proportional rate from Virginia City points to North Carolina points than the rates now existing, and would endeavor to work out with the Commission such reasonable reductions, the Commission or its representatives to sit with the representatives of the carriers in the effort to arrive at what would be reasonable and proper in the premises. The proposition thereupon went on to carefully explain that "although actuated by the disposition to make sacrifices to fairly meet the views entertained in North Carolina that freight rates from the West to North Carolina points are unjustly discriminatory as compared with rates from the West to Virginia City points," the carriers could make no such adjustment as would extend reductions into territory other than North Carolina and to explain the reasons for it, and, to ensure this, there was an express provision that any basis agreed upon should be carried by the North Carolina authorities to the Interstate Commerce Commission and should become effective only if that Commission would enter an order which would protect the carriers from reductions into other territory because of such reductions to North Carolina points.

Third: It provided that the Legislative Commission or the carriers might bring up any other points that either thought proper for discussion and action.

Reverting now to the second paragraph of the above proposition, it will, we think, be readily appreciated, from reading the text of that paragraph, especially in view of the statement made by the spokesman of the carriers, that the only way that the second paragraph could be carried into effect would be through the means of reflecting into North Carolina points the influence of the abnormally low rates which exist to Virginia Cities (for which these carriers are not responsible and which they cannot control), and that any basis of agreement reached under that paragraph and covering the points thereby provided for, must be such as would not involve a reduction of rates into other states. This limitation and condition was, by the express terms of the proposition, put upon the negotiations. It was considered essential by the carriers and its propriety was expressly agreed to by the representatives of the State. Negotiations were thereupon entered into under the limitation that anything agreed upon in respect to reductions of rates must be of such a character that it should not have the effect of reducing the rates of the carriers into territory other than North Carolina and that that conclusion should be approved and endorsed by an express order of the Interstate Commerce Commission protecting the carriers from any such reduction into other territory.

It follows from this that any reduction of rates that might be agreed upon, coming as a consequence of the influence of the abnormally low rates to Virginia City points, must be greatest to North Carolina points in closest proximity to Virginia City points, and would gradually lessen and finally disappear as the distance from Virginia City points increased. Otherwise, we would create such a situation that points in North Carolina near the South Carolina border, or the Tennessee border, would have such low rates that the influence of such low rates would necessarily extend across the borders into other states, and the Interstate Commerce Commission could make no such protecting order as was in contemplation and expressly provided for. This, we submit, must be universally conceded.

Fully appreciating, therefore, the problem before them, and seeking in the most earnest and sincere way to find a solution, the chief freight traffic officers of these railroads were instructed, by their chief executives, to consider and report a basis of adjustment that would reflect, to the utmost practicable extent, the influence of the Virginia City situation into North Carolina and at the same time would preserve the essential condition of the proposition that it should not operate beyond the limits of North Carolina territory.

Pursuant to these instructions and after a thorough investigation of the rate situation applicable to North Carolina, these representatives of the railroads, with the full authority of the chief executive officers, suggested certain material reductions in the rates complained of to North Carolina points, which we then believed, and still believe, are in accord with both the letter and the spirit of the basic proposition. We believed that the proposition then made embraced all the reductions which could be made without opening the doors to such radical reductions of rates throughout the Southeastern territory as would reduce the rates into other territory than North Carolina and thus threaten the very existence of these properties.

We thought it best and, in fact, necessary, for the chief traffic officers of the roads to take up with the Legislative Commission the discussion of rates, rather than that the chief executives should do so, for it was a subject in respect to which these traffic officers alone could enter into an intelligent discussion of all the essential details. In fact, it will be seen from the very language of the proposition that it was in contemplation that the Commission itself need not meet the representatives of the railroads, for it might desire its representatives to be experts in rates and to sit with the representatives of the carriers—and likewise it was provided that the representatives of the carriers—without designating them and thus giving the carriers like opportunity to be represented by their traffic experts—were to sit with the representatives of the Commission, or the Commission itself, in the effort to arrive at what would be reasonably proper under the circumstances.

The reductions proposed were applicable to all points in North Carolina within the range of the principle of reflecting into North Carolina along the influence of the low rate basis to the Virginia City points. The reduction was greatest at the points nearest the Virginia Cities; it was less as this distance increased, and it disappeared practically altogether before it reached the State southern and western border lines. As heretofore ex-

plained, we could not hope that the Interstate Commerce Commission would approve reductions on any other principle or would be able, under any other conditions, to enter an order protecting the carriers from a reduction of their rates into other territory because of these reductions to North Carolina points.

We did not approach the Legislative Commission with the idea of assuming a trading position. We thought it due to the importance of the occasion and to the dignity of the representatives of the State, that we should come forward at first with the best proposition which we believed we could offer. While we regarded the proposition we submitted as the best and most substantial which we thought could be worked out, we were still always in the attitude of readiness to have our authorized representatives sit down with the representatives of the State, and discuss, in all its features, any suggestion that might be advanced, and were ready to consider with an open mind anything that might be brought to our attention in that connection.

We are, however, of the opinion that our offer was most substantial and that the extent and scope of the reductions contemplated by it have not yet been fully realized, and that the benefits to be derived from putting it into effect have been almost entirely overlooked.

Our proposition was the result of a patient and conscientious investigation. It was submitted to the Legislative Commission on April 19th and declined by the Commission the same day. A counter proposition was made that afternoon by the Commission; and, after fully considering this counter proposition for a period of ten days, we were convinced that the rates suggested would result in reductions of revenue so serious as to impair the usefulness of these carriers and that it would be impossible to put them into effect without causing a general reduction throughout the southeast.

As the proposition of February 26th provided that any reductions agreed upon were to be of a character not to affect rates outside of North Carolina, and as it was never contemplated that the railroads were to make sacrifices which would destroy their usefulness and their ability to perform their public service, we believed that the counter proposition submitted by the Legislative Commission, while in good faith intended to be, was not in compliance with the express provision of the basic proposition of February 26th. We gave our reasons for not accepting this proposition of the Legislative Commission in the answer submitted to the conference at Raleigh on April 29th, which was given in writing, and while we do not consider it appropriate to enter here into a discussion of the merits of the rate situation, that answer, which deals with it, is subject to the inspection of any person interested in its contents.

In the afternoon of April 29th the Legislative Commission submitted a rejoinder to the effect that our answer was not satisfactory, and offered certain modifications of its counter proposition, thus, as it seems to us, indicating that they themselves realized that their first proposition could not be sustained and did not meet the requirements of the basic proposition which imposed limits upon the scope of the negotiations. We found, however, that the obstacles, which we considered insurmountable in the original counter proposition, still remained. The Commission was respectfully advised of the reasons why we found it impossible to adopt this second suggestion. We believed then, and we believe now, that these reasons were cogent and compelling, but the Commission thought otherwise and, greatly to our regret, the conference was, at the Commission's instance, declared at an end.

The termination of the conference has raised an issue between the Legislative Commission and the railroads. That issue is this: "What, under the terms of the proposition, and under a recognition of the principle of making a lower proportional rate from Virginia City points to North Carolina points than the rates now existing, would be a fair and reasonable reduction?"

We concede that the Legislative Commission, in advocating a readjustment of rates upon the basis which it has adopted, is acting in the best of faith and is actuated by patriotic motives. With equal sincerity and with full confidence in the justice of our position, we contend that the reduction proposed by the Legislative Commission is too great and is beyond what was contemplated by the agreement of February 26th. In fact, we are convinced that the suggestion of the Legislative Commission will be found in direct conflict with the provision of that agreement which requires that any reduction of rates agreed upon should be confined to North Carolina territory and should not extend into other States, and that an order of the Interstate Commerce Commission should be obtained protecting the carriers against any reduction into other States because of this reduction to North Carolina points. Nothing would give us greater satisfaction than to arrive at an amicable agreement with the Commission and bring about a settlement of the rate controversy upon a basis which would be in a position to accept.

In fact, as soon as it was made to us, we welcomed the suggestion that, although the conference between the Legislative Commission and ourselves had been declared at an end by that Commission, the North Carolina Corporation Commission, through its chairman, Mr. Travis, should take up with the traffic representatives of the railroads a further consideration of these controverted points, and see whether, in a patriotic and earnest effort on both sides, some amicable and reasonable adjustment might not be suggested and might not be reached. We are glad to say that these negotiations are continuing and we shall hope that such a conclusion may be reached by the representatives of the State of North Carolina, on the one side, and the representatives of these carriers, on the other, as will bring about an acceptable and a final adjustment of this much controverted question.

If our hopes and the hopes of the people of North Carolina be disappointed in respect to this, we will then be confronted by the question of what is the proper course to be pursued in respect to this matter.

Conceding the sincerity and patriotism and the desire to do justice on the part of the Legislative Commission and on the part of the representatives of North Carolina, but respectfully and firmly insisting that we are actuated by the same high motives, what is the proper thing for us to do? On the one hand it is proper for the carriers to insist on an arbitrary adherence to their own conclusions in respect to this matter and to refuse to have it determined by any independent and disinterested authority? On the other hand, is it proper for the representatives of the State to insist arbitrarily upon their view and to exercise their power for the purpose of coercing an acceptance? Must not both of these questions be answered in the negative? Is it not, on the contrary, the proper, wise, and patriotic thing to submit this difference, conscientiously entertained on both sides, to the adjudication of the only tribunal provided by law for the settlement of just such controversies?

It is not the function of the State, or within its lawful authority, to control interstate rates, and the power of the railroads in respect to them is expressly made subject to the control and authority of the Interstate Commerce Commission. It is universally admitted that the regulation of interstate rates is a function of the national government alone. That government has provided instrumentalities for the special purpose and a tribunal for the adjudication of all disputes relating to interstate rates. It has provided a Commission which to a very high degree possesses the confidence of the American people and its doors are open and its procedure simple. The determination of a case can be expedited and a conclusion reached at an early day. We are obliged by the proposition of February 26th to expedite a hearing before that Commission in every practicable way and we stand ready to promptly and fully comply with that duty. It will be seen from the language of the proposition, where it is provided that "if the Commission and the carriers fail to agree upon what would be reasonable in the premises, the North Carolina authorities may in their discretion submit the question to the Interstate Commerce Commission, and the carriers pledge

themselves to facilitate and expedite the hearing and the determination thereof in every reasonable manner" (although the State is not precluded from using any other remedy or taking any other action), it is expressly contemplated that an appeal to the Interstate Commerce Commission may be made. Not only was this in the contemplation of the proposition as made, but the joint resolution of the North Carolina Legislature at its last session, in relation to this very matter, contained these two paragraphs:

"THIRD: That pending the enactment into law by Congress of the principles above declared for, it should, in the opinion of the General Assembly of North Carolina, be the policy of the State, to press before the Interstate Commerce Commission objections to the injustice of allowing any discrimination against North Carolina points, in favor of other points outside of the State to which hauls are longer than to the North Carolina points, and which longer hauls include the hauls to such North Carolina points.

"FOURTH: That, in addition to the powers conferred on the North Carolina Corporation Commission to institute and prosecute cases before the Interstate Commerce Commission for relief to the people of North Carolina from discriminatory and excessive charges by common carriers, power is conferred upon the Governor to institute and prosecute such cases, either independent of or in conjunction with the North Carolina Corporation Commission, in his name on behalf of the people of the State, or in the name of any combined association or body of citizens, or in the name of the North Carolina Corporation Commission, and for such purpose the sum of not exceeding five thousand dollars a year is appropriated out of any money in the state treasury, not otherwise appropriated, to be paid on the order of the Governor."

Thus it will be seen that the Legislature of North Carolina expressly declared its policy to be that this matter of dispute should be carried by the State to the Interstate Commerce Commission and the Governor was empowered to institute and prosecute such proceedings, either independently or in conjunction with the North Carolina Commission, or in his own name in behalf of the people of the State, or in the name of others that are mentioned, and an appropriation of Five Thousand Dollars a year was expressly made to bear the expense of this procedure. Under these circumstances of the provisions of the proposition in question and of the declared policy of the State, made by a solemn resolution of its General Assembly, we submit that that course ought to be followed. The railroads have no purpose to enter upon a course of contention or of litigation. As above stated, they are prepared to expedite a hearing before the Interstate Commerce Commission by every means in their power, and when a conclusion is reached they are prepared to adopt it, whatever it may be, without questioning it in any court whatever, and retain it in operation, without controversy, during the full time the order of the Interstate Commerce Commission is in force.

We are profoundly impressed with the idea that an amicable settlement of this controversy is necessary for the welfare of all concerned. We hope for a definite and permanent settlement, and we appreciate that no settlement can be permanent unless fair and just both to the people of the State and the railroads. The railroads are among the largest employers of labor in the State; they pay the highest scale of wages; they contribute as much as any other class of citizens to the welfare of the State; while their employees contribute in no small measure to the State's prosperity and are effective in every patriotic service.

The principle of regulation has the unqualified approval of the American people. The power of regulation as to interstate commerce must of necessity be, as it has expressly been, vested in the federal government and in it alone. This principle carries with it certain restrictions as well as immense advantages, when viewed from the standpoint of any one State, as well as from the standpoint of all the States. The advantages immeasurably outweigh the disadvantages. In this connection it cannot be forgotten that North Carolina was one of the first of the States to advocate National, instead of State, control of interstate commerce. As far back as 1781, before the adoption of the Constitution, we find the representatives of North Carolina in the Continental Congress offering a suggestion to the States that the power to control interstate commerce be surrendered to the national government, instead of being reserved, as was then the case, by each State. Later, when the Constitutional Convention was framing our organic law, the representatives of North Carolina again favored, and were instrumental in securing, the adoption of the commerce clause as it now stands, which vested in the federal government exclusive right of control of interstate commerce.

In suggesting that this controversy, relating solely to interstate rates, be submitted to the Interstate Commerce Commission for settlement, we are not asking that any subject be withdrawn from any tribunal, legislative or judicial, of North Carolina, of which those tribunals have lawful or rightful jurisdiction. We are asking only what North Carolina has always insisted upon, that the regulation of interstate commerce shall, in this condition of difficulty, as well as in every other, be regulated by the power which all the States have placed exclusively in the hands of the federal government.

In view of this attitude of submission to law and in view of the facts herein stated in respect to what they have attempted to do to meet the just expectations of the state regarding these rates, we respectfully and earnestly submit that no charge of bad faith, or of lawlessness, or of arbitrary conduct, or of a desire to dictate the conditions under which the commerce of North Carolina shall be conducted, can justly be laid at the doors of these carriers.

In conclusion, may we not express the earnest hope that, notwithstanding the termination of the negotiations with the Legislative Commission, had at its instance, there may yet be found by the Corporation Commission, in the conference now being held with its chairman, Mr. Travis, and the representatives of the traffic departments of these carriers, a basis for a friendly adjustment of all differences?

May we not express the further hope that, if they should fail to find the means of arriving at an amicable adjustment, recourse will be loyally had by both parties to the only tribunal having jurisdiction under the laws of North Carolina as well as of the United States, and that these differences be submitted to its final adjudication?

Mindful of the fact that the State and the railroads must live together, that their interest and welfare are inseparable, and that the welfare and prosperity of both can be promoted only by a policy of good will and conciliation, is it not the duty of both sides to this unfortunate controversy to go to the one impartial tribunal, established by law for that purpose, which has the jurisdiction and the power to finally adjudicate and adjust the differences between us, to establish the rates which shall prevail, and to determine what is the fair and reasonable solution of our difficult problem?

Respectfully,
Southern Railway Company
By W. W. Finley, President.
Atlantic Coast Line R. R. Co.
By T. M. Emerson, President.
Seaboard Air Line Railway
By W. J. Harahan, President.
Norfolk & Western Railway Co.
By L. E. Johnson, President.
Carolina, Clinchfield & Ohio Ry.
By Mark W. Potter, President.
Norfolk-Southern Railroad Co.
By Chas. H. Hix, President.
Carolina & Northwestern Ry.
By W. A. Barber, President.

A. D. BRABBLE NOW IN CHARGE OF GASTON HOTEL.

A. D. Brabble has arrived in the city and during the absence of R. A. Cherry who is now managing the Atlantic Hotel at Morehead City, will have charge of the Gaston Hotel. Mr. Brabble is an experienced hotel man, having been connected with several hotels in this and other States, and will doubtless conduct the hotel in a most efficient manner.

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