

MAINTAINING ESSENTIAL SERVICES: RAILROADS IN
BANKRUPTCY—S. 2494

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The railroads of this country operate as an integrated nationwide system, notwithstanding the fact that the system is made up of a large number of individual private enterprises. By law they are required to do many things, such as interchange traffic and rolling stock, so that a person turning his cargo over to one railroad can expect that cargo to be delivered by any other railroad at almost any place in the country in accordance with his routing instructions.

Consequently, when one railroad is having operational difficulties, all the other railroads are affected, some, of course, more than others. If one railroad shuts down, it is like the dropping of a stone in a pond. The adverse impact is felt not only in the immediate service territory of the non-operating railroad, but also in the surrounding and eventually more distant territories served by connecting carriers which join with it to form the national rail system.

On July 21, I appeared before this Subcommittee and presented testimony about the state of the railroad industry. At that time I identified 4 Class I railroads in reorganization and 18 others whose financial condition the Commission considers to be marginal. The same situation continues to exist today.

Three of the largest seaports in the populous northeastern quadrant of the United States rely heavily for rail service upon bankrupt or marginal railroads.

Boston looks for rail service almost completely from the Boston & Maine and the Penn Central, both of which are major railroads currently in reorganization.

The Port of New York is linked with its commercial hinterland by the Penn Central and the Central Railroad of New Jersey, both bankrupt, and by the Erie-Lackawanna, which, because of an onerous debt structure (among other things) has long been a marginal operation.

Philadelphia depends largely on Penn Central and, to some extent, on the marginal Reading Railroad.

A fourth eastern port, Baltimore, also relies on Penn Central's service, although it is also served by major roads in relatively sound condition.

* Chairman, Interstate Commerce Commission. This statement forms part of the Chairman's presentation to the Subcommittee on Surface Transportation of the Senate Committee on Commerce on September 16, 1971.

It is thus painfully apparent that if one or more of these bankrupt railroads were to shut down for lack of operating funds, the ramifications would be extremely severe and far reaching. Many millions of people in the most densely populated part of the country could be cut off from fresh meat, fresh fruits and vegetables, and other products of agriculture. Their electric supply, dependent upon enormous amounts of coal delivered by railroad unit trains, would be seriously curtailed causing brownouts, stalled commuter trains and elevators, spoilage of refrigerated foods, etc. Commerce and industry in general would be dealt a severe blow; and unemployment would necessarily hit many industries.

The Commission today has no means to provide for a continuation of essential service in the event a major railroad runs out of operating cash and is forced to discontinue service. We are urging Congress to make those means available through an amendment of paragraph 16 of section 1 of the Interstate Commerce Act.

As it now stands, section 1(16) contemplates that a railroad may become unable to transport the traffic offered it, but the most it authorizes us to do is (and I am quoting)—

“make . . . just and reasonable directions with respect to the handling, routing, and movement of the traffic of such carrier and its distribution over *other* lines of roads. . .” (emphasis added)

Note that I emphasize the word “other”.

If the Central Railroad of New Jersey, for example, were to close down, we could not—under that quoted language—direct any of the connecting lines (B&O, Erie-Lackawanna, Penn Central, Reading, or others) to enter upon the Jersey Central tracks and serve the essential port facilities on the west side of the Hudson River, or transport the 30,000—40,000 commuters who daily use the CNJ to and from work in downtown New York City and Newark.

We believe it imperative that this void in authority be filled immediately, considering the straitened circumstances of many railroads, large and small, especially in the eastern district. Our proposal is to add three words to section 1(16), thereby authorizing the Commission to issue emergency orders for the immediate handling, routing, movement and distribution of shut-down railroad’s traffic over its own lines by other railroads.

This would be clearly emergency-type jurisdiction to be used in the limited situation where a railroad can no longer serve the public (as when a bankrupt railroad runs out of cash) and its curtailed services are deemed to be essential. I.C.C. directives would be given to other railroads capable of jumping into the breach. Terms of compensation would be worked out

among the carriers, and failing agreement, by the Commission on a just and reasonable basis, as is currently provided for in the present provisions of section 1(16) of the Act.

In enacting this amendment, Congress would also go a long way toward repairing certain inadequacies in section 77 of the Bankruptcy Act. That statute was enacted as a device to keep railroads operating during a bankruptcy, pending the development and adoption of a reorganization plan. Yet the nature of the bankruptcy situation and section 77 itself, contain elements which make it difficult to fulfill that objective.

At the outset, there is a division of responsibility between the Commission and the reorganization court, neither being able to expedite matters within the other's charge. Then there is the problem of the dual functions of the court to preserve the debtor's estate, but at the same time keep the railroad running—even though the latter involves a deficit operation. Creditors are reluctant to compromise claims, particularly when liquidation holds out a promise for a greater recoupment. Connecting carriers—even though they may be greatly dependent upon the debtor's service for their own survival—often are generally not willing voluntarily to undertake the service responsibilities of the bankrupt, or to propose take-over arrangements, when there is the prospect that, in time, desirable portions of the bankrupt road may be acquired at a bargain price.

These, and other factors, tend to prolong the process of reorganization, and in most instances, this is accompanied by a continual, sometimes massive, cash attrition. Obviously, when the debtor's liquidity comes to an end, operations must cease. There is nothing in the Bankruptcy Act to provide for continued operation of a railroad that cannot meet its payroll. Efforts to cannibalize a railroad to obtain funds for continued operation are restricted by Constitutional prohibitions against the taking of private property for public use without just compensation.

With section 1(16) amended as we propose, at least three important objectives can be achieved. First, the Commission would be able to prevent a cessation of essential service by directing adjacent or other connecting carriers to conduct operations over a defunct carrier's lines. Second, by maintaining such service, the Commission can prevent a chain reaction which otherwise could thrust marginal connecting carriers into bankruptcy. And third, the connecting carriers, knowing that they could be subjected to mandatory orders by the Commission to take over temporary operation of some or all the debtor's services, and knowing that a crisis-caused bargain will not be available to them, would be more apt to enter into constructive negotiations on a timely basis with the debtor and among themselves for the preservation of service through participation in the debtor's reorganization.