

IN THE
 DISTRICT COURT OF THE UNITED STATES
 FOR THE NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

In the Matter of CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COM- PANY,	}	No. 60463. Debtor.
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WILKERSON, District Judge:

The act of August 27, 1935, amending Section 77 of the Bankruptcy Act provides that upon the filing of the debtor's petition the Judge shall enter an order either approving or disapproving it.

The act then provides:

“The judge shall forthwith (and in pending proceedings immediately upon the effective date of this amendatory section) require the debtor to give such notice as the order may direct to the mortgage trustees, creditors and stockholders, and to cause publication thereof for such period and in such newspapers as the judge may direct, of a hearing to be held not later than thirty days after the date of such order, at which hearing or any adjournment thereof the judge shall appoint one or more trustees of the debtor's property. Such appointments shall become effective upon ratification thereof by the Commission without a hearing, unless the Commission shall deem a hearing necessary. Where a trustee is appointed who within one year prior thereto has been

an officer, director, or employee of the debtor corporation, any subsidiary corporation, or any holding company connected therewith, the judge, subject to ratification by the Commission as herein provided, shall appoint another trustee or trustees who shall not have had any such affiliations.”

In this case notice was given that the hearing would be held on September 24th. At that time suggestions as to the appointment of trustees were offered by the interested parties and the hearing was adjourned from time to time until today.

In complying with the mandate of the statute the Court must first decide whether or not one who has been an officer, director or employee of the debtor corporation within the last year is to be named as one of the trustees; for if this is done another trustee or trustees who shall not have had any such affiliation must be named.

The statute leaves the decision of this question to the discretion of the Court. That discretion, like all other acts involving discretion, should not be exercised arbitrarily. The Court must act in the light of the purpose of the statute, the scope and importance of the duties of the trustee in the particular case, and the facts presented and representations made by the parties whose interests are at stake.

The statute is one for reorganization. The road, in the contemplation of the statute, is passing through a transition period. The Congress has endeavored to provide a method by which, through co-ordinated action of the Commission and the Courts, the readjustment of the financial structure will be accomplished with as little disturbance of operating morale and efficiency as is possible.

Running through all of the provisions of the amendatory statute throwing light upon them and lending color

to them is the dominant purpose that while it may be necessary to change the financial structure of the road, its ability to serve the public as a utility should not be impaired.

In this connection consideration should be given to some of the provisions touching the duties of the trustees, particularly sections (c) (2), (c) (9), (d), (g) and (o) of the amendatory act.

Direct responsibility for the performance of the prescribed duties is placed squarely upon the trustees, and it is impossible under the statute to pass that legal responsibility on to employees of the trustees.

It follows, I think, from this that if the trustees are responsible for the management and operation of the road, for the prompt formulation of reorganization plans, and for the other duties specified in the statute, there should be among those on whom this responsibility rests and who are charged with the performance of these duties some one who has been trained and is experienced in the management and operation of a railroad.

It seems clear that if there are no valid objections to his official record, the one best qualified to serve the Court in that capacity is the one who has been at the head of the affairs of the system prior to the filing of the reorganization petition.

There may be instances, of course, where, by reason of personal disqualifications, a director or officer of the road should not be appointed. But if such a case were presented it would be necessary for the Court to select some one else who is trained and experienced in this particular field.

Those representing large interests in this property have appeared at the hearings, presented facts touching the management of the road, and have urged that the

president of the road shall be appointed a trustee. After all, it is their property which is at stake. They are the ones who will be benefited or injured by these proceedings. It is their voice to which the Court is required to pay heed in passing upon a reorganization plan. In my opinion, the same weight should be given to it in selecting trustees, or at least in determining whether they are to have the benefit of the services of the one in whom they have reposed confidence in the past in a position of trust in which he is directly answerable to them and to the Court.

There are no valid objections based upon the record and qualifications of Mr. Scandrett to his appointment. On the contrary, he is well qualified to serve the Court in this capacity. His name appears on the panel of those certified to the Court by the Commission prior to the amendatory act as eligible for appointment as trustees.

There can be no valid objection to his appointment based upon the item of expense. If some one else were appointed a trustee in his place, it is not to be believed that Mr. Scandrett's services would be dispensed with, and it would seem to be immaterial whether he receives compensation as a trustee or as an employee of the trustee. So far as I am concerned I very much prefer to have him where he occupies a position of direct responsibility to the Court and to the litigants for the management of this property.

If Mr. Scandrett is not retained in a position where he is directly responsible to the Court for his acts, I would feel obliged to name from some other railroad system an experienced railroad manager and operator. The situation here, however, in my opinion, does not require such treatment. I would not take the responsibility for the injury which it might inflict on the road in the

face of what is substantially the unanimous opinion of those who have a right to be heard on this question.

It is to be borne in mind that the trustees take the place of a board of directors in the management of the road. I am obliged to say that I do not know of anyone upon whom I would be willing to place the sole responsibility for the control of so large a railroad system. The injury which might come from the inexperience or unwise acts of one person clothed with sole authority and unchecked by the suggestion or advice of others, who likewise have responsibility to the Court, outweighs, in my opinion, the objection of a divided responsibility. Personally, I have found the administration of three trustees most satisfactory in the Rock Island case, and I am sure that is the opinion of the parties in interest in that case. All three of the trustees have earnestly devoted their energies and ability to the solution of the difficult problems confronting them.

I think that the president of the road should be named as one of the trustees.

As to the suggestion of the Reconstruction Finance Corporation: It has already loaned large amounts of money to the debtor, and expects to advance still larger sums in connection with the reorganization. This is a practical situation and must be dealt with accordingly. Without the aid of the Reconstruction Finance Corporation I do not see how a prompt reorganization of this road can be attempted. I think that the suggestion of the Reconstruction Finance Corporation is a reasonable one.

At the hearing those who spoke for large interests assured the Court that in their opinion Mr. Cummings could render valuable assistance in the reorganization.

A third trustee, in my opinion, should be named. After

carefully considering the situation, I have reached the conclusion that this trustee should be someone who has not been nominated or suggested by any of the interested parties. This is particularly true in view of the provision of the amendatory act which imposes upon the trustees the duty of reporting to the Court "any facts pertaining to irregularities, fraud, misconduct, or mismanagement, as a consequence of which the debtor may have a cause of action arising therefrom against any person or corporation."

I have decided to name as the third trustee an attorney of high standing and long experience in the Federal Courts. Mr. George I. Haight is well known to the bench and bar of practically all of the circuits of the United States, as well as of the Supreme Court.

Dated October 17, 1935.