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## Aviation ABC's of the Railway Labor Act

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# AVIATION ABC's OF THE RAILWAY LABOR ACT

BY C. ALLEN ELGGREN AND ROBERT M. MCCRAITH\*

## I. INTRODUCTION

Common carriers by air and their employees are subject to the Railway Labor Act in the same manner and to the same extent as carriers by rail and their employees. The Act similarly applies in the case of a carrier by air transporting mail for the United States Government, whether or not it is a common carrier.

The following is designed to explain, as simply and briefly as possible, the major features of that legislation. Purposely, we have not included qualifications and possible differences of interpretations as such refinements would require much fuller treatment.

## II. THE APPROACH

The purposes of the Act are:

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." (Section 2)

To achieve these purposes the Act provides primarily for the settlement of disputes by the interested parties. The Act seeks to promote settlement by imposing certain standards of conduct and providing facilities to be used only in the event mutually satisfactory disposition of disputes can not be reached by a carrier and the representatives of its employees.

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Among these facilities is the National Mediation Board, created primarily to aid the parties to come to agreement where prior negotiations between them have failed.

This Board possesses no powers of enforcement; its primary function is not to end strikes but to prevent them.

Adjustment boards are another facility which is required to be established. Their function is to handle labor disputes arising out of the interpretation of written agreements. The Act does not prescribe their make-up, except in the case of the National Air Transport Adjustment Board (which has not been set up). Boards other than the National Board are established by agreement and their functions may, therefore, be limited.

Arbitration is provided by the Act, but it is not compulsory. The creation of Emergency boards is also provided for, but their powers extend only to investigation and recommendation.

No policing agency is created by the Act. Even the National Mediation Board has only narrowly circumscribed administrative functions. In this respect that Board is quite different from the National Labor Relations Board or the Civil Aeronautics Board.

The Act is based largely upon voluntary compliance and voluntary agreements between employer and employees.

### III. DUTIES IN COLLECTIVE BARGAINING

The Act imposes a series of duties intended to stabilize the relationship between carrier and employee. *Some of these duties are merely directory, and not enforceable by penalties, while others are enforceable by formal penalties.* The duties are:

A. *Carriers and their employees shall "exert every reasonable effort to make and maintain agreements."* (Sec. 2, First)

This is perhaps the principal duty imposed by the Act.

*This duty does not require that agreements be made.* All that is required is reasonable effort, on both sides, to agree. And negotiations need not be terminated within any specified time.

The Act provides no penalty for failure to comply with this duty. But see the discussion on the penalty provisions of the Act in part VIII of this memorandum.

B: "*All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided with all expedition, in conference . . .*" (Sec. 2, Second, Sixth, Seventh; Sec. 6)

The Act contemplates two types of disputes between carriers and their employees. They are, *first*, those arising from differences between the parties as to *changes* in agreements covering rates of pay, rules and working conditions, and, *second*, those growing out of grievances, and the interpretation or application of labor agreements. In either type of dispute the Act requires that conferences be held, that the parties get together, talk things over, and make an honest attempt to reach an agreement.

The National Mediation Board has taken the view that its mediatory services can be invoked only "where direct negotiations between the parties, diligently and conscientiously conducted, have exhausted all possibility of effecting agreement."<sup>1</sup> (Disputes between rail carriers and their employees coming before the National Railroad Adjustment Board have also been remanded for failure to comply with this requirement.)

In order that the parties to a dispute may not avoid the obligation to confer, the Act requires that the time and place of conference be fixed within a certain period after receipt of notice of a desire to confer. The period within which conference must begin differs in the two types of disputes as does the penalty applicable should a carrier fail to comply with the requirements of the Act.

*As to changes in agreements*, the statute requires that both carriers and employees give "at least thirty days' written notice of an intended change in agreements . . . and the time and place for the beginning of conference between the representatives of the parties interested in such changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice." A willful failure or refusal by a carrier to comply with this procedure concerning proposed changes in labor agreements is a misdemeanor.

*In cases involving grievances or the interpretation of agreements*, the time and place for conference must be agreed upon within ten days after receipt of notice of desire to confer. The conference must be held not to exceed twenty days after receipt

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1. The Railway Labor Act and the National Mediation Board, page 10 (Gov't Printing Office, August, 1940).

of a request for conference, but a reasonable time must be allowed for the parties to reach the place of conference. Unless otherwise mutually agreed upon, the place of conference must be upon the line of the carrier involved. No penalty attaches under the Act for failure to follow this procedure. But see the discussion on the penalty provisions in part VIII of this memorandum.

Notwithstanding the foregoing, the Act specifically provides: "That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties." (Sec. 2, Sixth)

C. *A carrier may not alter the rates of pay, rules or working conditions, where notice of intended change has been given, or conferences are being held with reference thereto, or the services of the National Mediation Board have been invoked, until the controversy has been finally acted upon under the provisions of the Act.* (Sec. 2, Seventh; Sec. 6)

This duty is applicable to that type of dispute which deals with proposed *changes in existing agreements*. It might be argued that it does not apply to negotiations where no prior agreement or contract exists.

During conferences dealing with such dispute, or while such a dispute is in the hands of the National Mediation Board, this duty requires that the status quo be maintained as to *those things in controversy*.

In the case of such disputes, where the services of the National Mediation Board are *not* invoked, a period of ten days must elapse after termination of conferences, during which there is no request for or proffer of the services of the National Mediation Board, before a change may be made. Where the National Mediation Board proffers its services or its services have been invoked and it is unable to bring the parties to an agreement and the parties refuse to submit the controversy to arbitration, "no change may be made in the rates of pay, rules or working conditions or established practices in effect prior to the time the dispute arose" for a period of thirty days after the receipt of written notice from the National Mediation Board that its mediatory efforts have failed.

A carrier's willful failure to comply with these requirements is a misdemeanor.

The purpose of the periods of waiting is to give the parties to a controversy an opportunity to "cool off." The foregoing periods

of waiting, and that referred to in Part VII of this memorandum, are the only periods of waiting prescribed by the Act.

D. *Carriers are required to file with the National Mediation Board copies of each contract with its employees covering rates of pay, rules and working conditions.* (Sec. 5(e))

The requirement extends both to new contracts and to changes in old ones. They must be filed within thirty days after the execution of the new contract or changes in old ones have been made effective. In those cases where no contract exists between any craft or class of employees a "statement of that fact" *must* be filed, together with a "statement of the rates of pay, rules and working conditions applicable in dealing with such craft or class." Any change in such rates, rules or conditions must be reflected in a statement filed within thirty days after such change becomes effective.

There is no penalty for the failure to comply with this provision. But see separate discussion on penalty provisions in part VIII of this memorandum.

E. *Carriers are required to notify their employees that all disputes will be handled in accordance with the provisions of the Railway Labor Act.* (Sec. 2, Eighth)

This provision further authorizes the National Mediation Board to specify the form, times and places where such notification is to be posted. Also it is required that the notice include a verbatim reproduction of paragraphs 3, 4 and 5 of section 2 of the Act. (These paragraphs relate to the selection and choice of bargaining representatives by the employees.)

The National Mediation Board has prescribed a form of notification, in accordance with this authority. *This form must be used.*<sup>2</sup>

Willful failure to comply with the above provision is a misdemeanor.

F. *Neither carriers nor their employees "shall in any way interfere with, influence, or coerce the other in its choice of representatives."* (Sec. 2, Third)

Willful breach of this provision *by a carrier* is a misdemeanor.

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2. See appendix for copy of form prescribed by National Mediation Board.

G. *Nor may carriers do anything to induce employees to join or not to join a labor organization.* (Sec. 2, Fourth and Fifth)

The statute makes it "unlawful" for any carrier to interfere in any way with the organization of its employees. It may not use its funds in maintaining or contributing to a labor organization or labor representative, nor may it assist in the collection of dues, fees or assessments of a labor organization by deducting them from the wages of its employees.

Employees have the right under the law "to join, organize, or assist in organizing the labor organization of their choice," without being questioned in any way by a carrier.

Carriers are specifically prohibited from requiring employees to sign "any contract or agreement promising to join or not to join a labor organization."

Willful failure on the part of a carrier to comply with these provisions is a misdemeanor.

Unions sponsored and dominated by carriers have been eliminated by these provisions. See *System Federation No. 40 v. The Virginia Railway Co.*, 300 U. S. 515 (1937). "Closed shops" are also forbidden inasmuch as a carrier may not require any employee to become a member of a labor union.

H. *Carriers shall "treat with" duly designated representatives of employees.* (Sec. 2, Ninth)

When a dispute arises among the employees of a carrier as to who are the representatives of such employees, the responsibility rests with the National Mediation Board, upon request of one of the parties to the dispute, to conduct proceedings and determine the true representative or representatives of such employees.

Having made that determination, the Board will certify the representative or representatives to the carrier. It is then the duty of the carrier to "treat with" that representative for purposes of the Act. There is no penalty for failure to comply with this duty. But see discussion on penalty provision in part VIII of this memorandum.

#### IV. ADJUSTMENT BOARDS

For the purpose of providing a means of adjusting and settling disputes arising from grievances and the interpretation or applica-

tion of labor agreements the Act provides for the establishment of adjustment boards. Adjustment boards are of two general types.

A. *System, group, regional, or temporary national boards of adjustment.* (Sec. 204)

Pending the establishment of a permanent National Air Transport Adjustment Board, air carriers and their employees are required to set up by agreement either a system, group, regional, or temporary national board of adjustment. The organization, procedure, powers and practices of these boards, not contrary to the other provisions of the Act, are all matters to be determined by agreement between a carrier or carriers and its or their employees.

The Act does not require that these adjustment boards be given the power of final decision; the agreement setting up any such board may provide that the decisions of the board shall be advisory only, either in certain types of cases or in all cases. Indeed, the jurisdiction of any such board may be limited to certain types of cases—the Act does not specify the *minimum* jurisdiction which such a board *must* have; it specifies only the *maximum* jurisdiction which it *may* have. *The scope of its jurisdiction and its powers are entirely a matter of agreement.*

These boards do not have jurisdiction over changes in rules or wages.

There is no provision in the Act for the enforcement of the awards of this type of adjustment board.

The Act provides no penalty for failure to establish an adjustment board. But see the discussion on the penalty provisions in part VIII of this memorandum.

B. *The National Air Transport Adjustment Board.* (Sec. 205)

The National Mediation Board is empowered by the Act to establish a National Air Transport Adjustment Board, when, in its judgment, such action is necessary "to provide for the prompt and orderly settlement of disputes." The powers of this Board if established will be along lines of the existing National Railroad Adjustment Board, and its awards will be enforceable in federal courts.

The establishment of a National Air Transport Adjustment Board will not automatically dissolve existing system, group, or regional boards. Those carriers and their employees wishing to



retain such boards may do so. However, should either party, at any time, after the creation of the National Air Transport Adjustment Board, become dissatisfied with any system, group or regional board, "that party, upon ninety days' notice to the other party, may elect to come under the jurisdiction of the National Air Transport Adjustment Board."

#### V. THE NATIONAL MEDIATION BOARD

(Sec. 4, 5, 203)

The National Mediation Board is composed of three members. It has a staff of mediators who assist in the execution of the Board's duties under the Act.

Government expenditures involved in the administration of the Act and reports required by the Act are taken care of through the National Mediation Board. *Otherwise the Board's function is restricted to handling the following three kinds of cases.*

1. Differences between carriers and employees, regarding *changes* in rates of pay, rules or working conditions not adjusted in conference.
2. Disputes among employees as to who shall be their duly designated and authorized representative.
3. Interpretation of agreements which were reached through mediation where controversy has arisen over the meaning or the application of such agreements.

These three classes of cases are known as "mediation cases," "representation cases" and "interpretation cases," respectively.

In addition, the National Mediation Board may take jurisdiction over any case where "any labor emergency is found by it to exist at any time." It is only in this circumstance that the Board might deal with grievances or disputes arising from the interpretation or application of agreements other than mediation agreements.<sup>3</sup>

3. We should note one possible qualification upon the broad statement made in the text. The Act provides that the services of the National Mediation Board may be invoked in the case of any dispute "not referable to an adjustment board . . . and not adjusted in conference between the parties, or where conferences are refused." Section 203(b). As we have indicated in Part IV of this memorandum, an agreement providing for an adjustment board *may* limit such a board's jurisdiction so that in the case of *some* disputes the adjustment board would have no power to entertain the matter. In such a case, it *may* be that the above quoted provision of the Act would authorize the invoking of the services of the National Mediation Board. Even so, however, its services could be mediatory alone.

In other words, the National Mediation Board has *limited* jurisdiction. It has no general power to mediate any or all disputes which may arise; it can act only in specific types of cases outlined in the Act. Nor has it any jurisdiction to review decisions of adjustment boards. Nor is it an enforcing or policing agency.

A. *Mediation cases.* As has been stated, the Mediation Board will assume jurisdiction over these cases, involving a change in rates of pay, rules of working conditions, "only where direct negotiations between the parties, diligently and conscientiously conducted, have exhausted all possibility of effecting agreement between them."

Either party to a dispute may, by request, invoke the services of the Board. The Act requires that "the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement."

Should the Board fail to bring the parties together by mediation, the Act requires that it attempt to induce the parties to submit their controversy to arbitration in accordance with the provisions of the Act.

*The National Mediation Board has no power to compel the parties to settle their dispute, either by an agreement, by arbitration, or otherwise, nor has it the power to impose a settlement.* Nor is there any requirement that the National Mediation Board exhaust its mediatory efforts within any particular time.

When the National Mediation Board enters the picture it does so as a friend of both parties. Any member of the Board or any mediator assigned by the Board may conduct these mediation proceedings. The Board confers with the parties informally and has adopted no definite rules.

B. *Representation cases.* These cases arise from disputes "among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of the Act."

Where such a dispute exists it is "the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute." Under the Act, as interpreted by the Board, *an employer has no standing to request that an investigation of a representation dispute be made.*

In making investigations in representation disputes, the Mediation Board has the power "to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it."

The Board has no power to subpoena witnesses.

Where hearings have been held in representation cases, employers have ordinarily been invited to be present on the theory that they possess information which will be useful to the Board. The Board has considered them as witnesses only.

Representation, under the Act, is based on the majority of any class or craft. A representative does not have to be a labor organization; nor need it be an employee of the carrier.

Employees may change their representatives without affecting an existing labor agreement. *The agreement is with the employees and not with a union or other representative.* The representative is merely the agent of the employees.

C. *Interpretation cases.* The Act relative to these cases reads as follows:

"In any case in which a controversy arises over the meaning or the application of any agreement *reached through mediation* under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days." (Sec. 5, Second)

The effect on the Board's interpretation in these cases is *apparently advisory only*. And only where an agreement has been reached through mediation does the Board have any power to render interpretations.

## VI. ARBITRATION (Sec. 7)

As we have said, if the National Mediation Board is unsuccessful in bringing about an amicable settlement of a dispute within its jurisdiction, the Act requires that a final effort be made by the Board to induce the parties to submit their dispute to arbitration. *The Board has no power to compel arbitration.* The parties may accept arbitration, or refuse to submit to arbitration, as they desire.

The provisions for arbitration under the Act are elaborate and detailed. *Extreme care* should be exercised in framing the question or questions to be submitted to arbitration.

Agreements to arbitrate must be in writing and filed with the National Mediation Board. They may provide for a board of either three or six. Arbitration awards are filed in the clerk's office of a federal district court designated in the agreements. Unless a petition for impeachment of an award is filed within ten days after the award is made, the court will enter judgment on the award.

#### VII. EMERGENCY BOARDS (Sec. 10)

If (1) a dispute is not adjusted through direct negotiation or mediation and (2) the National Mediation Board fails to induce the parties to submit their controversy to arbitration and (3) such dispute in the judgment of the National Mediation Board "threatens substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service," the National Mediation Board is required to notify the President of the situation. The President may thereupon, in his discretion, "create a board to investigate and report respecting such dispute."

Such a board must be created separately in each instance, and is to investigate the facts and make a report to the President within thirty days from the date of its creation. It can make no award; it simply makes a report which usually contains recommendations.

"After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose." It is a misdemeanor for a *carrier* to fail to comply with this provision.

The purpose of these emergency boards is to place the facts before the public and to give the parties an additional period in which to "cool off" under the pressure of public opinion.

#### VIII. THE PENALTY PROVISIONS OF THE ACT

A. "The willful failure or refusal of any carrier, its officers, or agents to comply with" certain provisions of the Act<sup>4</sup> "shall be

4. In the preceding parts of this Memorandum we have in certain cases indicated that a violation of the Act is a misdemeanor. In those instances the penalty provision referred to in the text applies. In other cases, however, the Act does *not* provide that a violation is a misdemeanor—and in such other cases the penalty provision does *not* apply.

a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than \$1,000 nor more than \$20,000 or imprisonment for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply . . . shall constitute a separate offense." (Section 2, Tenth)

The *penalty* provisions of the Act are applicable to *carriers only* under the wording of the section quoted above. The duty to prosecute lies with "any district attorney of the United States" to whom any duly designated employee representative may apply. Costs of such actions are paid by the United States.

In the foregoing discussion we have indicated in the case of which duties a violation is a misdemeanor. None of the other duties is enforceable by the criminal law. However, the Supreme Court has held, in a case relative to the duty of a carrier to "treat with" the duly certified representative of the employees, that such duty created a legal obligation enforceable by a civil injunction suit by employees in a federal court despite the fact that the Act provided no penalty for a violation of that duty. *System Federation No. 40 v. The Virginia Railway Co.*, 300 U. S. 515 (1937). It is assumed that the other obligations of the Act may be enforced in the same way.

While the penalty provisions of the Act are applicable to carriers alone, there is nothing in the Act to prevent use of the civil injunction suit to compel *employees* to comply with the Act. It would appear that the reasoning of the *Virginia Railway* case would sustain an injunction suit by an employer against employees as well as *vice-versa*.

B. While the question is not free from doubt, the Civil Aeronautics Act of 1938 may impose an additional penalty upon air carriers for failure to comply with the provisions of Title II of the Railway Labor Act.

Section 401 (1) (4) of the Civil Aeronautics Act provides:

"It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with Title II of the Railway Labor Act, as amended."

This provision is not limited to any specific obligations imposed by the Railway Labor Act.

Section 1002 (a) of the Civil Aeronautics Act provides that "any person may file with the Authority (Board) a complaint in writing *with respect to anything done or omitted to be done by any person in contravention of any provision of this Act, or of any requirement established pursuant thereto.*"

Or the Civil Aeronautics Board may, under authority of section 1002 (b), make an investigation on its own initiative "as to any matter or thing" which may be complained of under the Civil Aeronautics Act "or relating to the enforcement of any of the provisions of" that Act.

And, under section 1002 (c), the Board may enter orders to compel compliance with the Civil Aeronautics Act or any requirement established pursuant thereto.

The Civil Aeronautics Board is further authorized under section 1007 (a) to seek enforcement of "any rule, regulation, requirement, or order," under the Civil Aeronautics Act, "or any term, *condition, or limitation of any certificate or permit issued under*" that Act, by applying to the appropriate United States district court, which "court shall have jurisdiction to enforce obedience thereto by a writ of injunction or other process, mandatory or otherwise."

The above remedies are all in addition to "the remedies now existing at common law or by statute." Section 1106.

The Civil Aeronautics Act also provides penalties which may likewise be applicable for a willful failure to comply with the Railway Labor Act. Thus Section 401 (h) provides that the Civil Aeronautics Board may "upon petition or complaint or upon its own initiative, after notice and hearing" *revoke* a certificate for intentional failure to comply with any *condition* of the certificate. And Section 902 (a) makes it a misdemeanor for any person knowingly and willfully to violate any condition of a certificate.

#### APPENDIX

The following form of notice has been prescribed by the National Mediation Board. *It must be posted in conspicuous places accessible to all employees by all employers subject to the Railway Labor Act.*

Form MB-1 (approved 8/4/34)

## NOTICE IN RE RAILWAY LABOR ACT

(Approved May 20, 1926; amended June 21, 1934)

.....  
(Inserting name of posting carrier).....  
(Place)

AUGUST 14, 1934.

*To all employees:*

1. *Handling of disputes.*—Pursuant to the provisions of section 2, eighth, Railway Labor Act, as amended (approved June 21, 1934), you are hereby advised that all disputes between.....

..... and its employees will be handled in accordance with the requirements of the Railway Labor Act.

2. *Contracts of employment.*—The following provisions of paragraphs third, fourth, and fifth, section 2, Railway Labor Act, are by law made a part of each contract of employment between this carrier and each of its employees, and shall be held binding regardless of any express or implied agreements to the contrary.

## FREEDOM OF CHOICE OF REPRESENTATIVES OF EMPLOYEES

Section 2, third. Representatives, for the purposes of this act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

## CARRIERS FORBIDDEN TO INTERFERE IN LABOR ORGANIZATION

Section 2, fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or

class for the purposes of this act. No carrier, its officers, or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

#### FREEDOM TO JOIN LABOR ORGANIZATION OF EMPLOYEE'S CHOICE

Section 2, fifth. No carrier, its officers or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

3 *Instructions to officers*.—All officers of this carrier whose duties are affected by the foregoing are advised to take notice of and to comply with the provisions thereof.

.....President  
(Insert original or facsimile signature of president)