The Tactics of General Atterbury

THE testimony of the chairman of the Association of Railway Executives, before the Railway Labor Board at Chicago shows the change of heart which the railway managements have suffered since the Esch-Cummins law was enacted.

It is now for the first time a matter of public record that the Association, on March 29, 1920, by a vote of 60 railroads to 41, repudiated its own labor committee, which advised a conciliatory policy toward the railway unions, and rejected its recommendation that the railways join with the unions in setting up national adjustment boards for the peaceful settlement of grievances. Instead the board adopted a fiery minority report of General Atterbury, (in which he alone of the committee members joined), breathing hostility to the Brotherhoods and vaguely prophesying syndicalism and ruin if the adjustment machinery set up during the war should be restored. Thereafter the executives were represented, in labor matters, not by Mr. Carl R. Gray, President of the Union Pacific, who since his association with Mr. McAdoo during the war has had a progressive mind on labor matters, but by General Atterbury, whose industrial philosphy is closely allied with that of Mr. Gary.

General Atterbury's melodramatic appeals to the Railway Labor Board were the first fruits of this new intransigent policy. With a fine show of impatience the General asked the board, without hearing evidence and without further deliberation, to abrogate the working rules established during the war and then retire from the controversy, leaving the railways to fight the matter out with their employees. The board's obvious answer was that its duty under the Transportation act was to decide controversies after hearing and deliberation, not before. After this flurry, the parties settled down after the manner of litigants to contest the issue before the board, namely whether or not national or regional boards of adjustment should be established, or whether each road should deal with its men according to its own sense of policy or power.

In another respect also the railways suffered a severe defeat before the Railway Labor Board. They asked the board, in determining wages and working rules, to take into account the financial condition of the railways. The board refused, saying that under the Transportation act, complaints as to the inadequacy of earnings must go before the Interstate Commerce Commission. The Railway Labor Board is only concerned with the justice and reasonableness of wages and working rules.

Upon the surface the ruling may appear to be merely procedural, but in reality it involves a fundamental controversy. The railways claim that they are entitled to a fair return on their property. If rates are too low to bring such a return, they must be increased, even if an increase spells ruin to shippers. If higher rates cannot bring a reasonable return, wages must be cut, and employees discharged, even if lower wages and unemployment mean starvation to the men and their families. This, and nothing less, is what the railways mean when they say that inadequate earnings must be taken into account by the Railway Labor Board. The receiver of the Atlanta, Birmingham & Atlantic Railway put this theory in a nutshell when he said that any order of the Railway Labor Board putting wages higher than the financial condition of the railways warranted would be unconstitutional.

On the other side is the claim of the employees that their right to reasonable wages and working conditions is at least as important as the railways' right to a reasonable return on the investment. A railway cannot reduce the price it pays for coal because its earnings are low. Why should it reduce the price of labor? Investors, when they put their money into railways, had certain expectations of profit, and took certain chances of loss. If the business was successful, the profit was theirs. If business was poor, and especially if it was so poor that it had passed the point where higher rates bring greater earnings, theirs was the loss. Why should they now try to shift that loss to the laborer, who is least able to bear it, who gets none of the profits of successful railway operation, and who never as a part of his bargain accepted the risk of loss from unsuccessful operation?

That is the heart of the present controversy between the railway companies and the unions. As a matter of economics, if not of strict accounting, there is a large national railway deficit. As long as present business conditions prevail, the railroads cannot earn enough to pay fair wages and a reasonable return on their investment. The railway officials themselves apparently admit that a further rate increase would not increase earnings, and might decrease them. Who is to bear the deficit, investor or worker?

We have no solution to offer. The policy of throwing the deficit upon the workers is condemned by its palpable injustice. Yet as long as the country depends upon private financing of its railway system, investors must have a fair return if the roads are to secure the new capital which they urgently need for their rehabilitation. The situation presents one of those hopeless dilemmas we cannot escape while we adhere to our present system of private financing and public regulation of railways.

Press Censorship by Judicial Construction

IF people truly acted according to self-interest, it has been observed, this would be a very different world. The dictum finds striking confirmation in the attitude of the press towards the recent decision of the Supreme Court in the Milwaukee Leader case. With few exceptions, newspapers have either approved, or have been indifferent to, a decision which immediately affects only a despised Socialist sheet, but which involves nothing less than the control of the press.

As the Milwaukee Leader had for weeks systematically carried matter which the Postmaster General deemed non-mailable, in September, 1917, he denied second-class postal rates to all future issues of the Leader. To deny mail service to a newspaper except at six times the usual cost of the service furnished to papers is normally, of course, to make its circulation impossible. The Supreme Court has now sustained this power of suppression in the Postmaster General. Our government, we are constantly told, is "a government of laws and not of men"; whence, then, is this power derived? Since the offending matter in the Leader was obstructive to the conduct of the war, was the power to deny second-class rates found in the Espionage act? No; Congress did not confer such power upon the Postmaster General even in that drastic war legislation. Was the Supreme Court, then, able to point to any general statute giving the Postmaster General discretionary authority over the life and death of a paper by denying it second-class rates in the future because of infractions of the postal laws in the past? No; there is no such statute. How then does the Supreme Court give the action of the Postmaster General the color of law? It does so by making two parallel lines of law meet. Let us trace this freak of legal geometry.

Congress from time to time by specific statutes has forbidden the deposit in the mails of certain printed matter. It seeks by this means to keep the mails free from publications offensive to decency or otherwise counter to the policy of the law, as for instance, matter violative of the copyright law or information concerning abortion. This legislation makes the use of the mails for transmission of papers carrying non-mailable matter criminal and also authorizes the Postmaster General to refuse to carry papers containing the non-mailable matter. But there is no law which, either by way of punishment or prevention, authorizes the Postmaster General to order that future issues of a past offender shall be refused transmission. The Espionage act enlarged the class of non-mailable matter; it did not enlarge the power of the Postmaster General in dealing with it. Violations of the Espionage act through the newspapers could be dealt with only as violations of Section 211 of the Federal Criminal Code, prohibiting obscenities, can be dealt with, namely, by criminal prosecution and by refusal to transmit the issues containing the non-mailable matter. In other words—and it cannot be emphasized too often—Congress trusted to criminal prosecution with all its Constitutional safeguards, and to a denial of the mails to the offending *thing*, but not to the offender.

Alongside of this exercise by Congress of its power to police the mails is legislation dealing with the cost of the mail service. Since 1879 a tariff of postal rates has been in force, graduated according to the nature of the mail matter. The second-class mail rate is confined to newspapers and other periodicals which possess the qualifications and comply with the conditions prescribed by Congress. The rate is very low and non-compensatory. "Justification for this non-compensatory service lies in the belief that education in its broad sense—intellectual activity fostered through the dissemination of information and of ideas—is essential to the life of a free, self-governing and striving people." Undoubtedly the Postmaster General, subject to a limited review by the courts, must determine whether or not a publication satisfies the conditions for second-class prescribed by Congress. Does, for instance, the Tip Top Weekly, each issue carrying a story complete in itself, or the Riverside Literary Series, meet the definitions of a newspaper laid down by the law? He must answer such questions; but there is not a scintilla of a suggestion in the Mail Classification act which makes the rating as second-class matter by the Postmaster General contingent upon the Postmaster General's verdict as to the legality either of the past or of the future issues of a newspaper. In other words, the low newspaper rate was not used as a means of policing the mails. "The question of the rate has nothing to do with the question of whether the matter is mailable." A newspaper is a newspaper, even though a Victor Berger edit it.

The Mail Classification act provides that a newspaper to be mailable at the second-class rate "must be regularly issued at stated intervals as frequently as four times a year," and that it must be "originated and published for the dissemination of information of a public character." Mr. Burleson held that if any issue of the paper contained matter violative of the Espionage act, the paper is "no longer regularly issued," and that it has likewise ceased to be a paper "published for the dissemina-