

FRANK AND OTHERS *v.* DENVER & R. G. RY.  
CO.

*Circuit Court, D. Colorado.*

May 22, 1885.

RECEIVERS—STRIKE.

Complaints of railroad employes considered, and duties of receiver and employes discussed, in regard to management of road.

BREWER, J., (orally.) In reference to this matter of the employes of the Denver & Rio Grande, certain gentlemen came before me the other day, with a petition, and I set a day for the hearing of the matters there complained of, which was the day before yesterday. On that day the parties on both sides appeared, and we had quite an amount of testimony taken down, which has been copied by the stenographer. At the same time the complaining parties filed a further statement as to matters to which they wanted to call the attention of the court. I have those two statements before me. I will not take time to read them in detail; but they include substantially these matters. They claim, in the first place, that the wages of the apprentices are not reasonably advanced. Then, in the second place, they say that men employed 758 in the freight department have been required to do extra work without extra pay. Then, in the third place, they claim that a number of men were discharged on the pretense that there was not work enough for them, when, in fact, there was work, and when, if there was not an abundance of work, the remaining employes were willing to work on shorter time. They also say that the employes in one specific department presented a petition to the officers of the road, asking for the discharge of one of the foremen, Mr. McClellan; and they say here that that foreman was so blasphemous and tyrannical as to unfit him for the position he holds.

Well, there are some of these things, frankly, that I think very trivial, and I think, gentlemen, that you will so agree with me when you stop to consider the situation.

Here are 10 young men who came forward to complain that their wages have not been reasonably advanced. They were young men, all the way from 16 to 22 or 23 years of age. Only one of them, according to his own statement, during the time that he had been working for the company, has had his wages reduced, and he was a boy only 16 years of age, whose wages were reduced from \$1.50 to \$1.25 a day, and a boy who, very obviously, was not overly strong. That was the only case of reduction. There was one other whose wages had remained what they were when he started; but the other eight had had a steady increase of wages. I do not mean regularly so much every month or every six months, but their wages had been increased. I asked two or three of them who seemed to be very sore, whether they had tried to set work or higher wages elsewhere. They had not, and did not know whether they could, yet their wages had been increased, while during the past year or more this road has been defaulting in all its interests. It has cost over to build this road of 1,300 miles, and the men whose money built it, the men who put their money into the building of this road so as to furnish work and support to-day to the 3,000 or 4,000 men employed along its line, have not during the last year received a dollar. Now, is it not fair and but common justice that they should have something, and that the earnings should not be all turned in one direction to lift up the wages of laboring men? It is not now as it was three or four years ago, when this road was doing a large business and paying interest, when it could afford to increase wages, for its earnings have dropped from 1882 to 1884 over \$800,000.

There is not one of you that if you started a business of your own would not do just as the officers of this company are doing. You start a little establishment for manufacturing, or anything of that kind, and have four or five men working for you. The times get hard and you cannot pay your debts. What would every one of you say to the men who were working for you? You would not say, "Well, now, I will go and increase your wages;" but, "My business is poor, I am making nothing; I am not paying my debts, and I cannot pay you any more wages;" and very likely in many cases you might say, "I will 759 have to reduce your wages; if you can do better elsewhere, well and good, but if you work for me I cannot pay you as much as I have been doing, because I cannot pay my creditors; I am in debt." Every man wants to pay his debts,—feels that he ought to; and while we call this a corporation, it is nothing but a combination of a great many men who put their property into this one form; and they think, and every man thinks and feels that he ought, so far as he can, to pay his debts, and that it would not be right for him to be extravagant in his living or his expenses when he is in debt. And it is not a matter, either, in which the present officers of the company, the men who are managing the road to-day, have any discretion. It is not for them to say, "We will increase wages and build care and extend the track, and so give employment to a grea' many." The court has said to them, "In taking possession o' this road you do so because it is a defaulting road; it does not pay its interest or its debts, and now, gentlemen, we put you in charge of this road and you have got to run it just as economically as you can. You must not expend a dollar in extending the road; you must not expend a dollar more than is necessary in keeping up the road;" and if it should appear that they were going on, I will not say extravagantly, but even carelessly, as owners of roads sometimes do, why then the court should step in

and tell them: "You forget that this road does not pay its debts; that it is defaulting, and it has not the means, and you must stop." That which every man has to do in his own business, those gentlemen who are placed in charge of this road have to do in the management of this road; so they could not do what, perhaps, many of them would like to do,—increase wages, increase their laboring force. They have got to keep within the limits of their instructions.

I will not go over the matter that I went over the other day, where I said to you that the employe was at liberty and the employer was also at liberty. Whatever laws may exist by and by, to-day, in this country, the employe is free to go or free to stay, and the employer is free to discharge him. That is the law in this country. The courts do not make the laws, but take them as the legislators make them. The parties may bind themselves by contract, but where they have made no contract for a stipulated time, the employe may leave when he wishes and the employer may discharge when he pleases. So that if it had been simply a mere naked question of law that you put to me in regard to this matter, I would have to say to you, in the fewest words, that the law is that the employer can discharge, and that in regard to the matter of wages and discharge the management of this road had simply exercised their legal rights; but I did not care to put it upon that simple proposition of law. I wanted to talk about the particular matters in which you felt you were wronged. I have no more to say in reference to this matter of wages. And the same thing applies to the extra work in the freight department. It is true, the witnesses differ a little; some thought they were never detained 760 longer than 15 or 20 minutes; others thought they were detained till 7 or 7:30 P. M. Several of them said that part of the day there was very little work to do; the freight coming in late in the afternoon and piling up work then, while

right after dinner there was little to do and they were comparatively idle. Be that as it may, accept it just as broadly as any of these men put it, that they were called upon at times to work late at night, that they had to get there at 7 in the morning, be around all day, and were detained in the evening and got nothing extra for it,—take it as broadly and strongly as any one has put it,—well, the first thing that comes to any man's mind is, "Why do you stay there if the work is so hard? If there is work all around here and you can get a better or easier place, why don't you take it?" We all know the reason. It casts no reflection upon them. They stay there because they think there is a permanence about the work and perhaps for other reasons. I do not know what they all are, but they prefer to stay, even with the inconvenience of waiting one or two hours after 6 o'clock.

But there is back of that another thing. A railroad, of all business in the world, has to be prompt in all things. Their customers are the most urgent of all men. If any man goes to ship a bill of goods he wants to ship it right away; and if he has an invoice of a bill of goods coming from the east, he wants those goods delivered the moment they come. If a railroad manager said, "Well, there is no pressure, let it go over until tomorrow or next day," he would be receiving constant complaints; the business of the road would be lost. If a man wants things shipped, he will not have dealings with a road unless it is attentive and prompt. In courts there are many lawsuits tried where roads are sued for damages, and we have to lay down the rule every time that the highest diligence and the utmost care are required on the part of these railroads. If there is neglect of any kind,—the slightest neglect or delay,—the road has to respond for it; and it is one of those urgent, pressing, imperative occupations which inevitably and universally require that those in charge shall push things, shall see that the work is gotten out of the way

as quickly and rapidly as possible, and that the utmost care is paid in every department of the business. If the officers did not do this they would be brought up here day after day with a suit for damages, or a suit on account of delay in transportation, or something of that kind.

There is no occupation in the country to-day where there is more of what you may call almost a military necessity, and where there is any more imperative demand for that quick, pushing, sharp way of doing things. You and I, when we travel, we want everything provided for us and in the best condition. If we do not have it, we complain. If we ship goods, we want those goods delivered in promptness, in the quickest time. If they are not, we make complaint. And so these men that are managers and officers of a railroad corporation have got to face all the while this demand of the traveling and shipping 761 public, for best accommodations, the utmost speed, and absolute exactness, in all their transactions. That being so, I do not know of any large organization of business, any aggregation of labor, where there is a more imperative demand for almost military law and discipline; it has to be exact all the way through, from the first to the last man. I do not know how many employes there are on this road. There are 1,300 miles of road, and there must be four or five thousand men. The neglect of any one of them would bring large damages upon the road. When business is blocked up, the company must have men that they can depend on, and that do not stand upon the question of half an hour or three-quarters of an hour. If the work is there it must be done, and the men must be there to do it. And when I think of such an organization, with its imperative needs, I am frank to say to you, gentlemen, that it seems to me that it was trifling a little to be making the point that you were sometimes called upon to stay an hour or so to finish work. That was not true in the machine-shops, where

there was regular work; the only complaint was in the freight department, and I can now think of only one thing which reminds me of the conduct of those men who objected to work after 6 o'clock. During the war, when Gen. Price's army marched up through Missouri to the borders of Kansas, the Kansas militia was called out, and when we got to the state line between Kansas and Missouri, there were a dozen or 15 men in one regiment who refused to go over the state line; they thought there was a limit beyond which their patriotism did not go; they would go to the borders of the state line, but no further; and, although Gen. Price was within six or eight miles of that line, they would not go beyond it,—they were particular about that line.

The other matter which I have considered is of a different nature, and that is in regard to Mr. McClellan. The employes under him presented a petition to Mr. Sample first, I believe, and afterwards to Mr. Jackson, the receiver, and they there represented that Mr. McClellan was overbearing and profane; and those employes have made the same complaint here. They say that Mr. Jackson kept the petition a few days, and then reported that he had examined, and did not think the charges were sustained; but admitting that Mr. McClellan might swear occasionally; that in so doing he was not doing an uncommon thing, and that he (Mr. Jackson) did not find enough reason for making the discharge. Now, they bring the same matter up here. I could very fairly say, and I presume a great many judges would, that we have appointed a receiver in whom we have confidence, and that when these employes went to him, and he took the matter up and examined it, and was satisfied that Mr. McClellan was an efficient, and not a tyrannical and unfit, foreman, that his decision should be final, because he is in a position where he can get at all the facts. But I did not care to put it upon that ground, and so I told these gentlemen to make

a statement of all their complaints, which they did, and then I heard 762 the statements of Mr. McClellan, Mr. Groves, Mr. Sample, and Mr. Jackson. Doubtless Mr. McClellan does swear,—many men do,—and yet it seemed to me it could not be that he was one of those terribly profane men, for out of those various witnesses three or four said they never heard him swear but once, when he said to one of them, “What in hell are you doing?” or something of that kind; and one man, who was there several months, says he never heard him swear at all.

If you take out the testimony of Mr. Culmsee and one or two other witnesses, the evidence of the balance of the employes who were examined would show that Mr. McClellan did not swear half as much as perhaps nine—tenths of the people right here in this court—room. I do not mean to approve of swearing. I do not mean to indorse it at all; but I have seen some very good men who would swear most terribly. I could not but think, when I heard those gentlemen tell their stories, that Mr. McClellan was not very profane; and while he doubtless does swear occasionally, it is not very common, or else some of these men other than Mr. Culmsee and one or two others would have recollections thereof. Outside of three witnesses, the balance of them either say they never heard him swear, or that they remember only one or two instances, and some of them have been there for two or three years. They say he is tyrannical. I guess he is a driving man. I take it from the testimony on both sides that he is a pushing man. He says himself he tries to get a full day’s work, and it is very natural. I can believe, without any hesitation, that a man who is an earnest, pushing man, trying to get all the work that he can out of a large body of men, sometimes makes mistakes. I never saw a man that did not do it; and I have no doubt that it is true, as some of you feel, that at times he may have been, in this or that matter,



unjust, so far as you were personally concerned, and that you had really done all that you ought to have done. But such mistakes as that will always happen where a man is earnest, energetic, and driving. If he is a fair man, if he is a man that tries to do right towards his employer and the employe, although he may be one of those driving, resolute, pushing men, he is not a man to be discharged from any occupation. Upon the testimony of these complaining witnesses I could not but think that that was all that could be fairly said against him. On the other hand, there were Mr. Jackson, Mr. Sample, and Mr. Groves, the last two being so situated that they must know the facts of his conduct and the character of the man, and two or three foremen who were about there, who all testified that he was an efficient, faithful, honest, fair man. Ought he to have been removed? I think not.

It is fair to say that there is a matter back of that. Prior to this petition, prior to the discharge of any of those 10 men, it seems there was some trouble with an employe of the name of Ash, who was discharged, and a committee called on the officers in regard to the matter, 763 not a committee of the employes exclusively, but with one outsider at least. They went to see Mr. Groves and said to him that there was an organization which had brought larger corporations than the Rio Grande to terms, and that they intended to bring this road to terms. That was the first demonstration from these employes, a demonstration aided by outsiders. I do not mean to say that one of the employes made the above threat; it was from that one of the committee who was not an employe; but they were all there together. Now, let a number of men—employes—go with such a threat as that, if they afterwards come along with a petition of this nature, don't you know that every man will instinctively feel that it is simply an effort to carry out that threat, and very naturally will not feel as kindly

towards it as he otherwise would, because, as I said a while ago, any employer expects his employes to be loyal to him, and not obeying the orders or respecting the wishes of any other person or organization; and there is no business which requires the same loyalty that a railroad does. Only by it can the management of a large railroad guard against accident and against being mulcted in damages in the courts; and so when these men came, after making that threat, to the officers of the road with this petition, I do not wonder that these officers felt, before they had made any inquiry, that this was simply a movement in pursuance of that threat; especially as Mr. McClellan has been acting as foreman for about five years to the apparent satisfaction and with the confidence of the employes under him,—only one prior complaint having been made against him during all that time. If it was an attempt, by any organization outside of the management of this road, to control it, it was the duty of the officers of the road to resist it. The road cannot be run by outsiders. The management of the road must have absolute control. There is too much at risk. It is not like keeping a grocery store; it is not even like running a manufacturing establishment, where the employers, the managers, can take many chances. In the management of a railroad you can take no chances. You must have a corps of employes who are loyal to the road, who are looking after its interests ungrudgingly and without any divided allegiance. The moment it comes that a corps of employes in this shop or in that shop, or the train—men on the road, are wanting in loyalty to the road, the road had better stop; it is not safe to run it; and the officers of the road owe it to themselves,—owe it to the court that has appointed them,—to see that they have no man in that employ who is not absolutely loyal to the interests of the road.

I may have omitted some minor matters, but I believe I have spoken all that I desire about those grievances. I am frank to say to you that no one of them impressed me or arrested my attention, except that in reference to Mr. McClellan. So I made inquiries of all the men that were here, and heard Mr. Sample and the officers of the road who were likely to know of Mr. McClellan's efficiency; I had them subpoenaed to come, and they came, and I heard their testi—764mony. As I said, that was the only one of their grievances which, after you, gentlemen, had told your story, I felt was sufficient to arrest my attention; and after hearing all the testimony in the matter, I must say that I think the company have a most efficient and capable, and not an unjust, foreman.

Of course, you know from what I have said that I think you have made a mistake. I think you did not realize the fact that that road had to reduce its working force to get itself out of debt and out of the courts. I think, also, that some of you are embittered against the road; that you feel hostile to it. That cropped out in the testimony before me from several witnesses. Men whose feelings towards the road are vicious, who feel ugly towards it, such men it would not be safe for the road to have. I do not suppose that all of the employes came before me, but only such as were chosen or selected, or desired to come; and of those who came, some seem to me to be very fair men. Well, I think they made a mistake, yet I do not think they were acting viciously. I do not think to-day tha they feel ugly towards the road; I think they would be perfectly loyal to its interests; I think they are fair men. I do not know how much additional force, if any, the officers need in the shops and about the depot. If they do not need any, why that is the end of it. If they can get along with what laboring force they have, they ought to do it until they get out of debt, or at least until they have paid some of their indebtedness.

But I want to say to Mr. Jackson, right here, that I do not think you ought to make, I should not want you to make, the mere going out of these employes from work on the fourth of May a reason for not re-employing them. I do not know how many men you may need,—I do not know how many left, for that matter,—but I think it would be the thing for you to do, so far as you need men, instead of going away from here, sending elsewhere for laborers or mechanics,—I know you can get them all over the land; there are plenty who would like to come, for work is scarce,—instead of doing that, I think what you ought to do is, so far as you need mechanics and laborers of any kind, to take such of these as are the fairest and best men; men who‘ have not been ugly or vicious. Of course, there are men—I saw it right here on the witness stand, and I saw it upstairs—that it would not be safe to take into your employment. I do not know those men; I cannot make any selection. The court has placed you in charge of that property. You have the responsibility, and you must make the selection. You have to employ men, and there is a responsibility resting upon you for employing good men. Legally, the responsibility is with you; the court places it with you; and, in the nature of things, the court could not make any selection. So the responsibility of selection is cast upon you.

But I do want to say, and I want to say it to you in the presence of these men, that I do not want to see you shut the door down absolutely, and say: “I won’t take any man that went out on the fourth 765 of May.” I said to them that they were mistaken, and I said, and I say it again, that I think some of them are bad men; that they went out viciously, and feel ugly towards the road, and ought never to be in its employ. But at the same time, I think some of the men simply made a mistake; that they are fair men, and mean to do what is right; that they did as multitudes

do, act with their associates, go because they went, and, having simply done that, I think that you should not lift up the barriers against them. If they want to work, and if you have work for them, then such men as you select I should be glad to see you take back.

I do not know that I can say anything more in reference to this matter. Ever since I have been here, for eight days, I have had the troubles of this strike, and of the employes of the road, before me in one shape or another. It has been an embarrassing, difficult question. I have tried to make it plain to you that the laws must be enforced, that the employer is a free man, as well as the employe; that there are rights which the law guaranties, and will enforce, and I have had to punish some who I thought were intimidating, trying to coerce the management of the road. I did it reluctantly; I did it firmly. And I can only say in conclusion, for I suppose this is the last of this matter that will come before me, I have tried to be perfectly fair and frank with you all. You are all comparative strangers to me. I never was here holding court but once before. The attorneys and citizens here are all comparative strangers. I had no feeling one way or the other. I heard every man that had anything to say, and I have tried to decide each matter as under the law it ought to have been decided.

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