

and orders entered in the several districts, printed and distributed as provided in the order; also an order requiring the receivers to pay the expenses of employes attending the conference ordered by the circuit judges and while attending this hearing.

An order will be entered in the districts of Colorado and Wyoming modifying the orders entered in those districts on the 26th and 27th days of February, 1894, to conform to the order now entered in the district of Nebraska, relating to the rules, regulations, and schedules of pay.

RINER, District Judge, concurs.

THOMAS v. CINCINNATI, N. O. & T. P. RY. CO.

(Circuit Court, S. D. Ohio, W. D. May 31, 1894.)

No. 4,598.

1. RECEIVERS—REDUCTION OF WAGES—REASONABLENESS.

A railroad company, whose sole property was the equipment and leasehold of another road, passed into the hands of a receiver. The annual rent was a first lien on the equipment, and the leasehold was subject to forfeiture for nonpayment of the rent. Owing to general business depression, the earnings of the road fell off, until they were not sufficient to pay the rent, and the receiver ordered a reduction of 10 per cent. in the wages of all employes. It appeared that a like reduction had been theretofore made by competing roads, and that, in order to avoid discharging many employes, the receiver had been compelled to lessen the working time of each one. *Held*, that the reduction was not unreasonable.

2. SAME—WORKING TIME.

Where a 10 per cent. reduction of wages by a receiver of a railroad company is reasonable in itself under all the circumstances and the general condition of trade, it is not rendered unreasonable by the fact that his employes were already working on short time, with a proportionate reduction of wages; the shortening of time having been directed with their own consent, in order to avoid the discharge of many of their number.

Petition of Arland E. Brown and others in the suit of Samuel Thomas against the Cincinnati, New Orleans & Texas Pacific Railway Company.

Peck & Shaffer, for petitioners.

Harrison, Colston, Goldsmith & Hoadly, for receiver.

Before TAFT and LURTON, Circuit Judges.

TAFT, Circuit Judge. This is a petition by Arland E. Brown and others, claiming to represent a large majority of the men in the employ of Samuel Felton, heretofore appointed receiver herein, praying that the court direct him to modify an order issued by him on March 27th, and which went into effect May 1st, of this year. The order was as follows:

"Cincinnati, New Orleans and Texas Pacific Railway Company, S. M. Felton, Receiver.

"Cincinnati, March 27, 1894.

"The receiver regrets to announce to the officers and employes that, in spite of all the efforts made by the exercise of economies in every direction, a

reduction in wages cannot longer be prevented, owing to the enormous and continued decrease in earnings. It was hoped last fall that business throughout the country would show an early improvement, and that condition, together with the large economies inaugurated, would prevent the necessity for any general reduction in wages. This condition has not been realized. For the calendar year 1893, the gross earnings are over half a million dollars less than for the year 1890, and have shown a continued and steady decrease ever since that time. The last six months show the lowest earnings of any similar period since 1888. Therefore a general reduction of ten per cent. is ordered, effective on and after May 1st, to apply to all salaries over \$35 a month and all wages over \$1.10 per day, not including reductions of ten per cent. or more made since July 1st last.

"S. M. Felton, Receiver."

On the 30th of April, a petition was offered for filing in this court, which prayed that the foregoing order might be suspended and revoked. It was denied, because the petitioners, having had 30 days' notice, delayed presenting the petition until the day before the order went into effect. The court then stated that it would, however, hear an application to modify the order, and restore the rate of wages, on the service of five days' notice upon the receiver. The practice by which employes of railroad receivers are permitted to apply to the court for relief from any substantial grievance suffered by them in the operation of the road under the authority of the court is well established. It was approved by Mr. Justice Brewer in *Frank v. Railway Co.*, 23 Fed. 757; by Judge Treat in *Re Doolittle*, Id. 544, 548; by Judge Speer in *Waterhouse v. Comer*, 55 Fed. 149; by Judge Ricks in *Continental Trust Co. v. Toledo, St. L. & K. C. R. Co.*, 59 Fed. 514; by Judge Jenkins in *Farmers' Loan & Trust Co. v. Northern Pac. R. Co.*, 60 Fed. 803-818; and by Judge Caldwell in the matter of the *Union Pacific Railroad receivership*, 62 Fed. 7. In accordance with this practice, and agreeably to the leave of court, the petitioners, after due notice to the receiver, have presented their petition praying that the order of March 27th be modified, and the old rate of wages restored, on the ground that the order is unfair and unreasonable, and works great hardship to the men. The receiver has filed an answer to the petition, and affidavits have been submitted by both sides on the issues of fact raised in the petition and answer. Judge LURTON kindly consented to sit with me to hear the case. The questions arising have been fully argued by counsel, and we are now to decide them. We have examined with minuteness all the evidence adduced, and have given it the consideration which a step so important in the policy of the receivership and so full of interest to many persons deserves.

The employes who are represented in the petition may be divided, for the purposes of this discussion, into three classes: First, the shopmen and machinists; second, the terminal yard men, including the engineers and firemen of switch engines, foremen of switch crews, and helpers; and, third, the trainmen, including engineers, firemen, conductors, and brakemen, all of them engaged in the operation of trains upon the road, as distinguished from the second class, whose duties are performed in shifting trains at terminal points.

1. The shopmen and machinists are employed in the repair shops of the company at Ludlow, Ky. They are paid a fixed sum per day

of 10 hours, the sum being reduced proportionately when the number of hours of work per day is reduced, so that really they are paid by the hour. There is no definite evidence on behalf of petitioners that the rate per hour paid by the receiver since the order of reduction went into effect is less than that which is paid by railway companies having shops in this vicinity. On the contrary, it seems from the affidavits filed by counsel for the receiver that the present rates per hour are quite equal to any paid in this market. It does appear beyond question, however, that the amount of time which each individual in the shop is required and permitted to work is at least 20 per cent. less than the time which he worked a year ago, so that his income is proportionately reduced. There has not been enough work to occupy all the men full time. Two courses have been open to the receiver,—he might discharge more men, and employ those remaining at full time; or he could do what he has done, divide the work to be done among all the men, and reduce the number of hours of work and income for each individual. By the latter course he was able to help more men to earn something. This course he understood to be the choice of all the men, and he took it. We fully approve his action. The receiver cannot make work for the men, nor can he pay any more per hour because many individuals work few hours than he would if fewer individuals worked full time. The reasonableness of the rate paid for the work is to be determined by the same standards, whether the work is done by many, working a few hours a day, or by that number who, working full time, would be sufficient to do it. Judging in this way of the rate of wages now paid shopmen and machinists, it is 10 per cent. less than it was when times were good and the demand for labor was constant.

2. The switch engineers, firemen, foremen of the switch crews, and helpers are paid by the day. Some railroad companies whose lines run into Cincinnati pay more per day to this class of employes than the receiver now pays under the order of March 27, while others pay about the same or less. Whether the conditions of employment vary with these different companies we cannot judge. The hours seem to be about the same. We may reasonably presume that the rates of wages paid by the Cincinnati, New Orleans & Texas Pacific Railway Company in good times were the equivalent of market rates, because, if they were not, then the employes would have sought employment elsewhere. An attempt has been made to show that the switch crews, for the year last past, have done more work than in previous years, because 9 engines and crews now do the work which 12 did before. But it appears that the difference is offset by a change in the arrangement of tracks in the switching yards, and by a reduction in the loads handled. The switch engines are called into use to assist trains up the grade from Ludlow to Erlanger,—a distance of six miles. This is a saving to the company, because it dispenses with the necessity of the “pusher” engine, required when business on the road was heavy. It is said that the switch engineer and fireman should receive road mileage for this service, because, under the agreement in force between the