Do Rails Have the “Right” to Strike?

Well it's certainly the understatement of the year, so far anyway, to state the obvious that these are indeed interesting times we are living through. There's a lot going on out there but I want to focus here on the upsurge in working class resistance to the status quo and the implications for rail workers. For rail workers who've been beaten down for years, contending with barbaric work/life schedules, as well as repressive, day-to-day working conditions, it can be inspiring to see so many workers on strike and/or spontaneous walkouts by workers, often not even unionized, because they've simply had enough.

Just as demoralization and defeatism can be contagious, so can defiance and resistance. At this point in time there seems to be some of that going around. If it can be half as contagious as the Omicron Covid variant, we might be on to something here. Hopefully we can ride this wave for a while and see where it takes us.

So what does this mean for rail workers? Though I haven't worked on the railroad for a few years, my hunch is that very little has changed with this common scenario: Some of the younger workers, still full of urine and vinegar, get all riled up and are choomping at the bit, “Look at those Kellogg and John Deere workers on strike. Look at those Amazon workers protesting and walking off the job. That’s what we need to do!” Then the older veteran, who’s been around the block a few times, attempts to clarify the situation. In doing so he serves to put a damper on the young workers' admirable spirit of defiance, be that intentional or not. “No we can't do that. We can't strike. If we even attempt it the government will shut us down with a Presidential Emergency Board (PEB).”

Unfortunately the older worker is absolutely 100% correct - on a certain level - regarding the facts. In the context of what rail workers are up against, eloquently articulated in RWU’s Strike Resolution on Page 5, now’s as good a time as any to revisit the basic “highlights” of the Railway Labor Act (RLA). The operative formulation here is “in theory.”

Per the RLA the president has the legal authority to end any legally sanctioned strike with the stroke of a pen. Without going too deep into all the sordid details of the RLA, the short version is that he/she orders everybody back to work and commissions a three person panel - the PEB. In theory one member would be pro-rail carrier, another member would be pro-union and then the other member would be the proverbial “neutral” arbitrator. The basic “highlights” of the RLA give the federal government the “legal” right to ratify this proposed contract. If they reject it, the PEB will then investigate the issues of the dispute. What's the carriers' position and what are their arguments to motivate and justify it? Then ultimately in a grand spectacle of brotherly compromise - their version of, “Can’t we all just get along?” - they make their own proposals on what the terms of the contract should be. The unions are given the opportunity to ratify this proposed contract. If they reject it, the PEB proposal is then submitted to Congress where it is ultimately rubber stamped and signed by the president. Isn’t that special!

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While there have been some regional and local disputes where the federal government has intervened over the years, I'll highlight the three major national disputes that the federal government squashed during my career.

1) After three days of the 1982 nationwide BLE strike, we were ordered back to work by President Reagan. The proposed “agree-ment” from the ensuing PEB was then rammed down our throats by the House and the Senate, both voting in favor of this wretched concessionary contract by overwhelming majorities of approximately 9-1. Reagan's signature was obviously a foregone conclusion.

2) The 1991 national strike during the reign of President George H.W. Bush pretty much followed the same script, except we were only allowed to have a fleeting taste of our potential power for all of 19 hours.

3) In 2011, President Obama, friend to all labor bureaucrats, wouldn't even let us taste a “drop” of our potential power, putting the PEB wheels in motion a few hours before we were due to hit the picket lines. This time, the BLE leadership encouraged its membership to simply accept the PEB's recommendations.

So while the RLA gives the federal government the “legal” right to intervene in our labor disputes, are we forever obliged to unconditionally accept it? Was the RLA imposed by God Almighty himself/herself for eternity or is this simply legislation enacted by mere mortal politicians, at the behest of the railroad “robber barons” in the earlier part of the 20th century, in response to a wave of rail labor militancy and strikes? You get three guesses and the first two don't count.

It’s long been my personal opinion that one day the government will force rail labor to confront this issue. Do we continue to just accept these terms of engagement? There is sufficient historical precedent for limits on assemblies, picket lines, marches, back-to-work-orders etc. being forcefully defied. The history of the struggle for social justice includes many instances of our forefathers voting with their feet to reject any moral and ethical legitimacy of the “legal” restrictions imposed on them at the time. Many paid a price for their convictions, being savagely clubbed, teargassed, mauled by vicious attack dogs, pummeled by high pressure water from fire hoses, jailed etc. and sometimes even shot down in cold blood. Without this heroic resistance, it’s fair to assert that we would not have labor unions today and Jim Crow segregation would reign supreme. The lousy working conditions at Amazon would be something we could only dream of.

To be continued...

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