CHAPTER III

THE FUTURE OF RAIL TRANSPORT

THE RAILWAY RATES TRIBUNAL

The regulation of railways in Great Britain must be judged, in the last analysis, by the work performed by the Railway Rates Tribunal. The control exercised by the Ministry of Transport is, for the most part, either delegated or limited in scope.[1] The Railway and Canal Commission, with jurisdiction over general questions of service, is rarely appealed to, and has no authority to make investigations and regulations on its own responsibility. The National Wages Board is concerned solely with the labor conditions of railway employees. The Railway Rates Tribunal, by means of its periodic review of standard revenue and rates, possesses a continuous responsibility for the financial health of the railways. Then, too, the Railway Rates Tribunal is the principal agency through which there is hope of obtaining more favorable rates. Parliament's confidence in the tribunal is indicated by the provision in the London Passenger Transport Bill which gives the Railway Rates Tribunal authority over the charges and revenues of one of the world's largest transport combines.

We must attempt to see whether the Railway Rates Tribunal is free from the defects which turned the business community away from the Railway and Canal Commission. Has the Railway Rates Tribunal been able to satisfy the railways, the traders, and the consumers? Is effective regu-

[1] "A right to enforce common standards may be valuable in the last resort. In practice, however, in matters relating to the commercial and technical side of railway operation and development, we tend to keep such powers as the State possesses in reserve for matters of national scope and importance and to refrain from the detailed and constant intervention in management. . . ." Sir Cyril Hurcomb, permanent Secretary to the Ministry of Transport, "The new transport and its administrative problems," (1931) 9 *Pub. Admin.*, 197.

lation even possible when service, rates, and labor costs are under the control of separate administrative bodies? These are simply the general questions which an examination of the Railway Rates Tribunal is bound to raise. In addition, we shall be interested in the specialist, as compared with the judicial characteristics of the Tribunal; in its speed, costs, and procedure; and in the general results and conclusiveness of its determinations.

The Railway Rates Tribunal consists of three permanent members, one of whom must be a business man, one a railway expert, and the third, the President, a lawyer. They are jointly selected by the Lord Chancellor, the President of the Board of Trade, and the Minister of Transport, but in actual practice the last named is principally instrumental in making the choice. Before appointments are made it has been customary for the Minister to consult the principal interests concerned. Of the present members, the railway representative was formerly a Vice-President of the L.M.S.R., the trading representative was connected with the iron and steel industry, and the President was a lawyer for the railways and appeared frequently before the Railway Rates Tribunal. Despite the President's intimate association with the railway interests, the traders' organizations unanimously endorsed the appointment because of his expert knowledge of the railway industry and his independence of mind. However, in several instances the view was expressed to the writer that the precedent established was somewhat unfortunate, inasmuch as the success of interest representation in adjudication depends primarily upon the chairman's complete freedom from partisan predilection. After their experience with the Railway and Canal Commission, however, the trading interests unhesitatingly prefer an expert, whose past experience has been as a special advocate, to a lawyer whose general practice has trained him to excel in the technicalities of law and procedure but not in railway economics.

Provision has been made to add to the membership of the Tribunal for the hearing of particular cases whenever the Minister of Transport or the interests affected desire it. Two panels have been set up, one consisting of representatives of trading, labor, passenger and agricultural interests, and the other of representatives of the railway interests. So far this means of increasing the representative character of the Tribunal has never been used.

Although the Act refers to the Tribunal as a court, the commission bears less resemblance to the judiciary than does the Railway and Canal Commission. The room in which the Rates Tribunal convenes is part of a temporary structure and hence the surroundings are informal. The white wig of the judge is conspicuous by its absence. The customary salutation to members is "Sir" instead of "My Lord." The two railway and trading members ask questions of witnesses and of counsel as freely as does the President, the legal expert. The observer gets the impression that all three commissioners consider themselves equal in status and hence they confer frequently and freely. The atmosphere is refreshingly informal, and technical objections and disputes regarding evidence are not tolerated.

Proceedings before the Railway Rates Tribunal are usually brief. A representative of an important trade association told the writer that in his twelve years' experience he can recall only half a dozen cases that have been strenuously contested by prolonged arguments. A study of the decided cases corroborates this observation. Outside of its annual review of standard revenue and rates, most of the Tribunal's time is devoted to the formal approval of agreements which have been made outside the court. This statement requires an explanation. In the first place, most applications are made by the railways, who make monthly applications for the approval of exceptional rates in order to meet motor competition. The receipts from exceptional

rates now account for almost 80 per cent of railway revenue. About 90 per cent of the total rates granted are within the discretion of the companies to alter, subject merely to reporting them. In 1928 the railway companies were adding to their exceptional rates by about two thousand to three thousand a week. Frequently the railways have been induced to apply for lower rates by the Traders' Coordinating Committee, which bargains with the railways for the principal commercial interests. Other trade associations, such as the Federation of Iron and Steel Manufacturers, carry on their negotiations directly with the Railway Companies' Association, the legal, public relations, and lobbying agency of the railways. Agreement is usually reached by this means. Occasionally, complaints are made to the Minister of Transport or to the Board of Trade, in which case applications are sent directly to the Railway Rates Tribunal. But it should be noted that the private negotiations of interest groups constitute by far the larger part of rate determination.

The vital part of the Tribunal's work is to see that agreements which have been reached outside are consonant with the principles and standards which have been laid down in the statutes or in the past decisions of the Tribunal itself. Administrative standards, like rules of law, tend to become fixed. But administrative adjudications produce more "new" cases than do most fields of law, because the exercise of discretion and the making of new law by means of administrative standards becomes a necessary and recognized part of the process.[1] Frequently the duty of the

[1] A few cases will illustrate the point. It was held by the Court of Appeal, affirming the decision of the Rates Tribunal, that the ordering of interrogatories by the Rates Tribunal is discretionary, since the Tribunal is not bound by the practice of the High Court, and "the Court of Appeal will not interfere with their discretion except when it is shown that there were no grounds on which it could have been exercised." Lord Mayor of Bristol *v.* Great Western Railway Co., (1931) 20 *Railway and Canal Cases*, 28. A principle which the Railway Rates Tribunal has developed is this: "A rate is not necessarily excessive because a railway company is not handing back on balance to the

Tribunal is to establish a standard that will result in equality of treatment between parties and regions.[1]

Proceedings are brief because most of the Tribunal's work consists of an examination of very complete written applications, evidence, and pleadings. This material must be presented to the commission well in advance of the actual hearing. The really important work of the commission is performed at this stage.

In the hearing of cases the members of the Tribunal frequently interpose. Speeches by counsel are discouraged and seem out of place. The principal part of the public hearing consists of question and answer between the members of the railway court and the person or persons who are conducting the case. The Act of 1921 gave the commission power to make its own rules,[2] a fact that unquestionably accounts for the dispatch and informality of the procedure. For example, the Rules provide that "No proceedings before the court shall be defeated by any formal objection."

traders all the savings that they are making in reduced expenses." M. and South Wales Coal Owners' Association *v.* Great Western Railway Co., (1925) 18 Ibid., 1; Manuf. Confectioners' Alliance *v.* Caledonian Railway Co., (1923) 17 Ibid., 135. The discretion of the Tribunal relative to classification is not a matter of law and will not be disturbed, it was held, on appeal, in Railway Standard Charges on Coal, Etc., (1928) 19 Ibid., 163.

[1] Compare the following cases. "The fact that equal rates were formerly charged from two competing points to a common market unequally distant from them, whereas the corresponding standard charges are unequal, is not a ground on which the Railway Rates Tribunal will grant a new exceptional rate so as to restore the equality." Dowlow Lime and Stone Co. *v.* L.M.S.R., (1931) 20 *Railway and Canal Cases*, 41. On the other hand, "it was not intended by the Railways Act, 1921, to establish the principle of equal mileage rates for all places, and the consequent adoption of exceptional rates based on competition by water or road as the standard for all rates, whether such competition exists or not, and therefore the existence of a low exceptional rate (not being in fact an undue preference), while in fact to be considered, is not alone a sufficient ground for ordering the reduction of a rate for goods in competition with those having the benefit of the low rates." Port of Manchester Warehouses Ltd. *v.* Cheshire Lines Committee, (1923) 17 Ibid., 95. This policy has undoubtedly caused the extension of road competition. A claim for allowance on the ground of inequality of service was denied in the case of Good & Sons Ltd. *v.* L.N.E.R., (1928) 19 Ibid., 191.

[2] Railway Rates Tribunal, Statutory Rules and Orders, No. 906, 1922.

It is not surprising that Mr. Justice Scrutton, on an appeal from the Railway Rates Tribunal, stated:

"The first thing it is necessary to understand is the position of the Railway Rates Tribunal. Fortunately for themselves, they are not bound by any rules in either the White or Red Book, on which I congratulate them. They have power given to them by statute to make certain rules of their own, and the rule they have made is this. 'Where not inconsistent with these Rules the general principles of practice or any particular practice of the Superior Court may be adopted and applied at the discretion of the court to proceedings before them.' That leaves the Railway Rates Tribunal an extremely free hand in a subject-matter with which they are very familiar, and in my view this court should not interfere with the discretion of the Railway Rates Tribunal unless there are no materials on which that discretion could be exercised."[1]

The cost of taking cases to the Rates Tribunal is moderate, and all charges are definitely stipulated in the Rules. For example, the daily charge for a hearing is only £2 for ordinary cases and £5 5s. od. for disputes between railway companies. Costs are not assessed against one party only, unless in the court's view the case is "frivolous and vexatious." The employment of special counsel is unusual, because most arguments are conducted by the full-time employees of the respective companies or associations, as a part of their manifold duties. Every interest may be effectively and cheaply represented except the small merchant who is outside a trade association, and the unorganized body of consumers.

A high degree of finality attaches to the judgments of the Railway Rates Tribunal. There has been only one reversal out of a half-dozen appeals since the court was created.[2]

[1] Lord Mayor of Bristol *v.* Great Western Railway Co., (1931) 20 *Railway and Canal Traffic Cases*, 35, 36.

[2] This case was of considerable importance because it involved the expenses and earnings of the ancillary services of the railway companies and the treatment they should be given by the Rates Tribunal in arriving at the total standard revenue of the railway companies. The Tribunal had supported the railways' contention that all receipts and expenses in respect of railways, sidings, and warehouses within the area of railway-owned docks were to be treated as "railway" receipts and expenses. The Court of Appeal, reversing the Tribunal, held that as a matter of "law" the line of demarcation between railway and dock accounts must be drawn so as to include under dock admin-

The decision may be reached by a majority of all members present, including those selected from the panels; but there has been no case in which there was not unanimity, although occasionally reservations have been expressed. The Rules (par. 53) of the Tribunal provide that:

"No appeal will lie from the court upon a question of fact, or upon any question regarding the *locus standi* of an applicant or the right of audience. An appeal will lie from the court to a Superior Court of Appeal upon a question of law. . . . The decision of the Superior Court of Appeal will be final; provided that where there has been a difference of opinion between the Superior Courts of Appeal, the Superior Court of Appeal in which a matter affected by such difference of opinion is pending may give leave to appeal to the House of Lords on such terms as to costs as such court shall determine. Save as above stated, an order or proceeding of the court is not to be questioned or reviewed, or to be restrained or removed by prohibition, injunction, certiorari or otherwise, either at the instance of the Crown or otherwise."

The Rules also provide (par. 49) that the Tribunal may review, rescind, or alter its own decision or order in case of surprise, submission of further evidence, some substantial wrong or miscarriage, or mistake or inadvertence.

The Railway Rates Tribunal, like the best regulatory commissions in the United States, is "a model for judicial reform." But there are definite limits to what the Tribunal can accomplish. Its jurisdiction is not as broad and its discretion is not as great as that of American railway commissions.

The jurisdiction of the Railway Rates Tribunal is concerned primarily with the classification and standardization of rates, but the Tribunal also took over other powers which formerly belonged to the Railway and Canal Commission. For instance, the Tribunal may determine "The reasonableness or otherwise of any conditions as to packing of articles specially liable to damage in transit or liable to cause damage to other merchandise." Further powers relative to service

istration all the different operations which, under statutory provisions, go to make up the business of a dock undertaking. Manchester Ship Canal *v.* Amalgamated Railway Companies, (1928) 19 *Railway and Canal Traffic Cases*, 74.

and public convenience were provided in the Railways (Road Transport) Act of 1928 and the Local Government Act of 1929. It is to be hoped that these provisions may be the entering wedge which will result in Parliament's transferring the remaining railway powers of the Railway and Canal Commission to the Railway Rates Tribunal.

The technicalities of the rate structure will not be dealt with here, but they have been amply discussed by other writers.[1] However, we cannot form a sound estimate of rate regulation without reference to the Tribunal's most important function, the annual review of standard revenue and rates.[2]

The Railway Rates Tribunal began the annual review of standard revenues in 1928. It will be recalled that the Act of 1921 provided that the Railway Rates Tribunal should establish such rates as would, together with other sources of income, guarantee each railway the same net revenue as it earned in 1913, the standard year. Whether this provision was wise or its accomplishment possible may

[1] Fenelon, op. cit., ch. ix; Sherrington, op. cit., II, 62–120. The following account gives the most important information. "A new classification of merchandise has been made containing twenty-one classes (excluding coal, coke, and patent fuel) instead of the eight classes contained in the old classification. New charges—known as 'standard charges'—were approved by the Tribunal in relation to the new classification, and railways were placed under an obligation to charge these standard charges without variation either upwards or downwards 'unless by way of an exceptional rate or an exceptional fare continued, granted, or fixed under the provisions of this Part of the Act or in respect of competitive traffic in accordance therewith.' This last provision is, of course, of great importance, since flexibility of charging powers is essential for the proper and satisfactory working of a railway. Substantially, a company may quote exceptional rates in respect of the carriage of merchandise provided those rates are not less than five per cent nor more than forty per cent below the standard rate. If a company wish to quote exceptional rates outside these margins, the consent of the Tribunal must first be obtained. Considerably greater latitude has been given to the companies in the matter of fares charged for passengers, and a company may now charge fares below the standard fares in such circumstances as they may think fit. All exceptional rates charged below the ordinary fares must, however, be reported to the Minister of Transport, who, in certain circumstances, may refer the matter to the Tribunal." (1931) *Final Report, Royal Commission on Transport*, 25.

[2] (1929) *Proceedings of the Railway Rates Tribunal*, 222; (1930) Ibid., 137; (1931) Ibid., 126; (1932) Ibid., 253.

well be doubted, but in any case the rate base was made definite. With reference to the Tribunal's responsibility for fixing the standard revenue William A. Robson has written,

> "Here was a truly Herculean task. The mere discovery of the standard net revenue of 1913 took the Tribunal many months of hard work to ascertain: much cerebral activity on the part of the companies and their legal and financial advisers was directed toward getting the figure fixed as high as possible; and on the part of the consumers of transport services towards keeping it as low as possible."

In the period following the Railways Act of 1921 trade experienced a short-lived boom, which undoubtedly affected the amount of standard revenue the commercial interests were willing to countenance. Moroever, the trading community was convinced that substantial rate reductions would be forthcoming and hence did not seriously question the basic assumptions underlying the standard revenue of approximately £50,000,000.

The exact provisions of the Railways Act of 1921 relating to standard revenue are of such vital importance that they should be fully explained. The Act (Sect. 58) stipulated that charges for each amalgamation should be fixed so that together with other sources of revenue they would yield an annual net revenue equivalent to the aggregate net revenues of the constituent and subsidiary companies in 1913, together with (*a*) a sum equal to five per cent on the capital expenditure, which formed the basis on which interest was allowed at the end of the period during which the railways were in the possession of the Government; and (*b*) an allowance for additional capital expended so as to enhance the value of the undertaking since January 1, 1913, and not included above; and (*c*) a reasonable allowance in respect of capital expenditure [not less than £25,000 in each case and not included in (*a*)] on works enhancing the value of the undertaking, but which had not become fully remunerative in 1913; and (*d*) an allowance up to 33⅓ per cent of any economies that might be effected through amalgamation. The

Act further provided that the Tribunal might, on any subsequent review, raise or lower the allowance for "the revenue which would be produced by any such business" in the case of ancillary services over which the Tribunal has not been given jurisdiction.[1] Finally, if in any year there should be a surplus over the standard revenue 80 per cent of this is to go to the reduction of charges and 20 per cent may be retained by the company. The Rates Tribunal was instructed to review the rates, exceptional and standard, at the end of each successive year.

With reference to the method followed in the annual review, the Railway Rates Tribunal has stated, "It has been our task to follow the development of the companies' case and see that their methods are correct; to test the results of the companies' calculations and listen to all objections." Under the existing circumstances, no other course is open to the Tribunal. Unlike American commissions, the Rates Tribunal has no staff of examiners, engineers, and financial experts in its own employ. The Tribunal may call upon the Ministry of Transport for certain information, but it has had occasion to do so only in the case of the annual review of standard charges.[2] In addition, the Minister of Transport may send a representative to appear in any case that is being heard by the Rates Tribunal. But it should be made

[1] The railways have invested in steamers, docks, canals, electric power stations, hotels, and road services, a capital sum of approximately £110,000,000, (1931) *Official Railway Returns*, 10. In case the Tribunal decides that the profits of these ancillary services have not been sufficient, the only course open is to reduce the amount the railway lines will be permitted to earn.

[2] Practically all of the data are obtained from statistical reports which are furnished by the railway companies. "The Ministry of Transport Act, 1919," states Sir Cyril Hurcomb, "enabled the Minister to obtain a wide range of returns and statistics from the railway companies; and these powers were fully exercised and were made permanent by the Railways Act, 1921. As a result, the Rates Tribunal has constantly before it a broad picture of the operating efficiency of the railway companies so far as that can be supplied by comparative statistics. There is, of course, a risk that statistical computations may become stereotyped and cease to stimulate thought; they need, therefore, to be looked at afresh from time to time." Hurcomb, op. cit., (1931) 9 *Pub. Admin.*, 196.

clear that the Tribunal is not an appendage of the Ministry; the two are distinct and independent. No confidential information is supplied by the Ministry; every report is made available to all interested parties. In other words, the Railway Rates Tribunal is not an investigative, originating body; it must be sought, and in reaching conclusions it depends upon sources of information not its own. The expert judges supposedly possess sufficient knowledge and experience to reach a salutary judgment on the basis of the evidence presented.

Although the Railway Rates Tribunal deserves commendation, several circumstances conspire to make important aspects of railway regulation in Great Britain generally impracticable and ineffectual. It appears to the writer, as it has to many others, that the railways have a dubious right to earn the present standard revenue even if it were possible for them to do so. The following objections to the standard revenue provisions appear on candid examination:

(1) A large part of the capital investment existing in 1913, quite irrespective of exorbitant first costs, is irreconcilable with the competitive value of rail transport today. It is socially unjustifiable to maintain railway capitalization arbitrarily. The turnpikes and the canals were not permitted to burden the national development by artificially protecting investments in them.
(2) The year 1913 was one of the best pre-war years for the railways, and it is out of harmony with prevailing or prospective conditions.
(3) When obsolescence has occurred, for example when stations or branch lines have been closed, the nominal value of the railways has not always been diminished although there is every reason why this should be done.
(4) The railway companies have invested £10,000,000 or more in road transport, and as the Royal Commission on Transport stated, they are feverishly extending their investments on motor services; the railways are permitted to increase their capital and their revenue by this means, although the companies themselves loudly insist that road competition is destroying the earning power of the railways.

So long as the railways are earning only what the traffic will bear, it may be asked, is not the question of standard

revenue unimportant or at least untimely? A thorough reconsideration of standard revenue requirements is necessary for at least three important reasons. The presumption regarding standard revenue requirements has an important bearing on those basic (heavy) industries which have no alternative means of transport and hence must pay higher rates as gross traffic falls:[1] the existing standard revenue is used as the principal argument in attempts to reduce railway wages; and it largely underlies the effort to check road competition.

Assuming that railway problems may still be solved by more effective regulation (an extremely doubtful assumption), the following reforms are suggested:

(1) The valuation of the railways on the basis of their earning capacity. (A rough approximation is all that would be possible.)
(2) The effective regulation by the Rates Tribunal of ancillary services owned and operated by the railway companies, where such jurisdiction would not conflict with other regulatory authorities.
(3) The transference of the remaining railway powers of the Railway and Canal Commission to the Railway Rates Tribunal, thereby unifying the control over service and rates.
(4) A grant of power to the Railway Rates Tribunal whereby it may conduct field investigations on its own initiative.

Whether or not it would be wise or expedient to give the Tribunal jurisdiction over railway wages (because they are a vital element of costs) raises a question which cannot be answered without further consideration.

THE POSITION OF RAILWAY UNIONS

Until the end of the nineteenth century railway unions played only a small part in the general trade union movement, but once they were thoroughly organized the unions became exceedingly powerful and today their bargaining power is not excelled. The railway companies employ

[1] The railway companies have secured an increase of 41 per cent in gross receipts over 1913 for carrying less than three-quarters of the 1913 tonnage.

approximately 575,000 persons whose wages and salaries amount to £100,000,000 a year, which, allowing for the change in the cost of living, means that the average pay is about 50 per cent higher than before the war. Although the railway managements have made strenuous efforts to reduce the wages bill, reductions of only £4,430,000 have been obtained since 1919. In 1932 the railways attempted to secure a 10 per cent wage cut, but their effort failed. As a result of the National Wages Board's decision in January 1933, one thing appears clear: there will not be a return to 1913 wage standards. The independent Chairman of the National Wages Board found that

> "The wages of railway servants were at the beginning of the war unduly low; the new (1919–20) standards of pay were intended to remedy this position and were related to the skill necessary for and the responsibility of the work; the new standard salaries and rates of pay were agreed as permanent standards."[1]

The victory of railway labor is attributable to the aggressive leadership of the three powerful unions, the National Union of Railwaymen, the Associated Society of Locomotive Engineers and Firemen, and the Railway Clerks' Association with respective memberships of 450,000, 11,000, and 85,000. The strong position the railwaymen occupy today is largely explained by agreements which were made during the war.

The new charter for railway labor was secured in 1919 and 1920 largely as the result of a strike in which the Government intervened as mediator. Prior to that time the progress of the unions had been slow. Although the first railway union was formed in 1865, the companies did not officially recognize trade unions until 1907. By that time the unions had become so large that the companies were forced to establish a conciliation system and to meet certain demands of the employees. However, a nation-wide strike occurred in 1911 and another was imminent when the war broke out.

[1] Decision 164, *National Wages Board*, 99. January 1933.

Between 1913 and 1920 the average weekly wage for all grades increased from less than 30s. to 85s. This increase took the form of an actual hourly rate advance, a reduction in hours by the inauguration of the eight-hour day, and the standardization of working conditions among employees. In 1919 a complete arbitration system was established, and in 1920 standards of employment were definitely set up and accepted, forming the basis of present-day agreements.[1]

The machinery of negotiation was recognized and enlarged by the Railways Act of 1921. Provision was made in Part IV of the Act for the establishment of conciliation boards similar to the Whitley Councils which were set up in other industries and in the Civil Service. The hierarchy of railway conciliation consists of local Departmental Committees, Sectional Councils, Railway Councils, the Central Wages Board, and the National Wages Board. The several boards, including the National Wages Board, are not bound to reach legally binding decisions, but with one or two exceptions compromise decisions have been possible. In recent months relations have become considerably more strained, however, and it appears that the system as a whole will not continue to work satisfactorily.

The Local Departmental Committees consist of four representatives of each side, and they exist in all stations and depots where the number of regular employees exceeds 75. The local committees deal with all questions affecting conditions of employment and they give the employees a wider interest in and knowledge of the administration. In case of disagreement, matters are referred to the Sectional Councils, which represent various groups of grades. Here again the companies and the workers are equally represented and the employees' representatives are elected by the

[1] The principal items in the agreement were a fixed schedule of wages, a guaranteed day and a guaranteed week of 48 hours, overtime for night and Sunday duty, and provision for rest periods and holiday observance. Wood and Stamp, *Railways*, ch. vii; Fenelon, *Railway Economics*, ch. v. For alterations of standard agreements which took effect in 1931, see Fenelon, Ibid., 76, 77.

unions. The Sectional Councils are concerned with the local application of national agreements and with broad questions affecting labor conditions. The final court of appeal in the framework of each of the four railways is the Railway Council, consisting of ten representatives from each side. The Railway Council deals with submissions from the Sectional Councils and with general questions affecting the system as a whole.

The Central Wages Board and the National Wages Board are the upper rungs of the conciliation hierarchy. These two bodies, which have been in operation since 1921, will probably be superseded by new conciliation machinery in 1934. The Central Wages Board consists of eight representatives of the companies and eight representatives of the trade unions, four of whom are selected by the National Union of Railwaymen and two each by the two smaller unions. The Board may consider questions relating to rates of pay, hours of duty, and other conditions of employment. In case of disagreement either side may refer the matter to the National Wages Board, the apex of the conciliation hierarchy.

The membership of the National Wages Board is drawn from wider sources, and an independent Chairman is appointed by the Minister of Labor; but, like the subordinate tribunals, the Board is not under legal compulsion to reach a binding decision. Agreement between the companies and the unions is the slender reed upon which the success of the plan depends. The Board, in addition to the appointive Chairman, is composed of six representatives of the railway companies, six representatives of the unions, and four representatives of railway users, two of whom have labor sympathies. The four interest groups designated are the Trades Union Congress, the Cooperative Union, the Association of British Chambers of Commerce, and the Federation of British Industries.

The success of the plan depends upon compromise. The

Board has heard 164 cases and only one of them, the latest, has led to a complete impasse. This situation arose out of a claim by the railway companies in December 1932, that the pay of 420,000 employees should be reduced 10 per cent, thereby effecting a saving to the companies amounting to £5,000,000 a year. The minimum wage for adult workers would have been reduced from 40s. to 38s. a week. In March 1931 the employees had accepted a decision of the National Wages Board which provided for a tentative cut of 2½ per cent on all salaries within the "conciliation" grades, i.e. all employees except shopmen and railway police. Out of a total of 575,000 employees, 420,000 are subject to the conciliation machinery under discussion. The application for the substitute 10 per cent reduction was more ably and hotly contested than any case which has ever been brought before the Board. The Chairman recommended a compromise reduction of 4⅙ per cent; the representatives of the railway companies clung to their original application in their written conclusion, but afterwards indicated their willingness to accept the Chairman's suggestion; the representatives of railway labor claimed a complete victory, and served notice that the Chairman's recommendation left matters just as they were before the hearing; while the four representatives of railway users divided evenly between the employers' and the employees' positions.[1]

After the decision most observers prophesied that the 1921 conciliation machinery would break down. This verdict seems to be borne out by the fact that on March 3, 1933, the railway companies served formal notice of their decision to withdraw from the National Wages Board and the Central Wages Board. In accordance with the 1921 legislation, twelve months must elapse before the notice of withdrawal takes effect. The companies made it clear that the existing machinery for local and sectional conciliation will not be affected. In the meantime wage conditions will probably

[1] Decision 164, *National Wages Board*, 106–119.

remain unaltered, and attempts are being made to prepare a new scheme that will be acceptable to both sides.

During the hearings it clearly appeared that railway labor is not prepared to make further wage concessions. Their representatives advocated a drastic reorganization of railway capitalization and finance, followed by nationalization. Failing in their effort to reduce railway wages, the companies have turned with increased vigor to the attack upon road competition.

ROAD COMPETITION

Apart from the unsatisfactory condition of the nation's trade, the rapid development of road competition since the war has clearly been the chief cause of the railways' recent plight. These two causes of railway distress are by no means the only ones: the effect of the internal weaknesses of the railways and the paralyzing result of tariff policies also deserve, but rarely receive, prominent consideration. Again, one cannot accurately measure the proportion of diminished railway receipts that is accounted for by the diversion of passenger and freight traffic to road haulers. Certain observations may be made with assurance, however, and fairly reliable deductions may be drawn therefrom.

Between 1923 and 1930 the number of motor passenger vehicles, private and public, more than doubled and motor goods vehicles increased from 173,363 to 334,237. In no country in the world is the number of cars so great in relation to area. During the general strike of 1926 scores of passenger and freight lines appeared on the roads, and a large proportion of the traffic which was diverted from the railways at that time has never been recovered. In distances of less than 50 miles motor companies have clearly established their supremacy, and the closing of railway branch lines is clear evidence of this fact. Due to the speed, economy, frequency, elasticity, and comfort of motor

transport over the shorter distances, it would appear that the railways have permanently lost this important source of revenue. Moreover, it has been demonstrated that motor vehicles can compete successfully over longer distances, especially if national highway construction is furthered. Finally, the railways are bound to haul all classes of goods submitted to them, while the road haulage companies can skim off the most remunerative part of the available traffic. It is not surprising that railway stockholders should conclude that competition must be eradicated and that the national economy demands the coordination of road and rail.

If transport by road should prove generally superior to transport by rail, why interfere with the eventual collapse of the railway structure? In the view of a business observer,

> "The railways must be saved from collapse in the interests of the public, not in the interests of the stockholders, who took their own risks in making their investments. They must be saved because (1) Transport by rail is far the best form of transport for large classes of goods, and almost invariably the best for long-distance traffic; (2) Transport by rail gives employment to at least two million people, taking into account railwaymen and their dependents; (3) The railway companies have the inestimable advantage of large and unimpeded arteries of communication running right into the centers of our large cities. In short, the public utility of railways is far from exhausted, and no alternative means of transport now in sight seems likely to make the railways useless."[1]

But it is one thing to say that the railways should be saved, and quite another thing to determine the conditions of their convalescence. The struggle between the rail and the road interests has caused more lobbying and propaganda than any clash between interest groups since the railways fought the canals and the turnpikes. A former Parliamentary Secretary to the Ministry of Transport recently wrote, "For some years past the question of Road *v.* Rail has been boiling up to such a pitch that if you mention the subject today you will find the public divided sharply into

[1] "Future of the British Railways," *Manchester Guardian Commercial*, January 7, 1933.

two camps who hold extreme views on either side, and few trying to hold the balance between these warring forces and to see how a middle path can be secured."

The question of competition between road and rail has been the subject of investigation by a Royal Commission[1] and by a committee representing rail and road interests.[2] The latter inquiry, which resulted in the Salter Report, is particularly apposite because it sought to determine the fair share of road expenditure that should be borne by commercial vehicles and to establish a fair basis of competition with the railways. This report seems merely to have fanned the flame of antagonism, and any action taken by Parliament on the basis of it is sure to cause strong resentment. In "The Case of Trade and Industry against the Report of the Conference on Rail and Road Transport," most of the principal commercial, agricultural, and road transport organizations of Great Britain thoroughly disapproved of the methods and conclusions of the Salter Committee, stating that the document was "partial and incomplete, and definitely biased in favour of the railways."

An extensive consideration of the merits of the case presented by the Salter Committee is out of the question, but the principal issues should be suggested. The main proposals of the Conference on Rail and Road Transport were that the burden of taxation should be readjusted in such a way that commercial vehicles would bear a much larger percentage of the total taxation, and that mechanically propelled road vehicles should be taxed £60,000,000 a year instead of the then £58,500,000. Unfortunately, none of the evidence taken by the Salter Committee has ever been published. The conference of traders, after observing that the Salter Committee had "trespassed into the consideration of the taxation of road (passenger) trans-

[1] *Royal Commission on Transport*, 1929-31. Cmd. 3751, 1931.
[2] *Conference on Rail and Road Transport*, Stationery Office, 1932.

port, for which it was ill-constituted," reached the conclusion that £40,000,000 is the maximum sum that should be levied on motor vehicles. The Salter Committee recommended that "commercial" vehicles should contribute £23,500,000 a year and that all other vehicles including private cars, coaches, buses, and taxis should be taxed £36,500,000 a year. The conference of traders pointed out that commercial vehicles, both goods and passenger, already contribute £31,200,000 a year and that if private cars and ratepayers were to pay their fair share of road building and maintenance the existing amount of taxation borne by commercial vehicles would be considerably reduced. Moreover, the Salter Report subsidizes seriously for a period of five years one form of transport, namely, compression-ignition-engined vehicles, at the expense of petrol-using vehicles, especially when these vehicles are competing with the railways; and as a corollary they fail adequately to safeguard the interests of trade and industry. "The distribution of the amount to be raised by the taxation of mechanically propelled road vehicles under the report," concluded the representatives of trade and industry, "is open to objection as unfair and prejudicial, is based upon erroneous particulars, and is inaccurate even on the principles laid down in the report."

The Salter Committee advocated that road traffic should be more meticulously regulated, in order that public safety might be increased and in order that the railways should not suffer from unequal disabilities. The Committee dealt primarily with the hours of duty, the rates of pay, and the conditions of employment of drivers, the fitness of the vehicle, and a much more drastic restriction of the number of vehicles in use upon the roads. The conference of trade and industry concluded that further regulation may be necessary, but that adequate machinery already exists; whereas the new proposals would be "impracticable, inequitable, and arbitrary" and would create "prejudice

and uncertainty among the providers and users of commercial road transport."

A writer in a recent number of the *Manchester Guardian Commercial* has summarized the objections to the Salter Committee's proposals as follows:

> "(1) the only conceivable object of the report is to drive some traffic back from the roads to the railways by making road transport more expensive; (2) the report assumes that motor traffic should pay the whole annual upkeep of the roads, including the service of loans raised in future for road works. This assumption is completely oblivious to the fact that a road increases enormously the rateable value of the property through which it passes; (3) the figure of £60,000,000 a year for the cost of the roads is grossly excessive; (4) motor transport already pays in taxation more than the total annual cost of making and mending roads; (5) the remedy for any public nuisance caused by motor traffic is surely not to drive heavy traffic off all roads but to schedule certain roads as the only arteries which such transport is permitted to use!"[1]

The railways have attempted to meet the competition of their new rival by going on the road themselves. Over £10,000,000 have been invested in new motor services or in existing companies, and the average return on capital invested has varied between 5½ and 7 per cent. Half of this amount was invested in one year, 1931, the railways having only been granted power to undertake road services in 1928.[2] At December 31, 1931, however, the railway companies and the local authorities combined owned only 11·67 per cent of all public service vehicles.[3]

[1] "Future of the British Railways," *Manchester Guardian Commercial*, January 21, 1933.

[2] At the end of 1931 the ownership of road vehicles by British railways was distributed as follows:

	Passenger	Goods and Parcels
L.M.S.	210	1,840
L.N.E.	40	798
Great Western	73	1,324
Southern	—	351
	323	4,313

(1931) *Railway Year Book*, 11.

[3] (1931–32) *First Annual Report of the Traffic Commissioners.*

When the Railways Act of 1921 was being drafted and almost continuously until 1928, the railways sought the right to establish motor services. The various proposals were strongly opposed by the road transport industry and by most of the trading interests, who feared the result of a potential monopoly. This move of the railways hastened the amalgamation of road transport services. The Minister of Transport also objected to the proposals because of the difficulties of regulating charges and because of the uncertainty regarding the effect upon standard revenue requirements. Committees that were appointed to investigate the subject pointed out that greater efficiency would be possible if the railways were permitted to establish "feeder" and "pick-up" motor services, but agreement was not reached as to the restrictions and form of control until 1928.[1] The establishment and regulation of railway motor services are shared by the Minister of Transport and the Traffic Commissioners, the latter having been created under the Road Traffic Act, 1930.

THE PROBLEM OF NATIONAL COORDINATION

The regulation of road traffic was comprehensively inaugurated by the Road Traffic Act, 1930.[2] The licensing provisions of this Act transferred the functions which had been exercised by over 1,300 separate and local licensing authorities to Area Commissioners in the twelve districts into which the country outside of London was divided. The Metropolitan Traffic Commissioner controls services between London and outside points. In the twelve provincial areas the commissions consist of three members, one of whom, the Chairman, devotes his whole time to the duties of his office. The other two commissioners are unpaid and are

[1] The history of the agitation between 1921 and 1925 has been covered by K. G. Fenelon, *Economics of Road Transport*, ch. xvi, London, 1925.

[2] 20 and 21 Geo. 5. ch. xliii. Sir John Brooke, "The administration and control of road traffic," (1930) 8 *Pub. Admin.*, 148–163.

appointed from two panels of persons nominated by the local governments. In the Metropolitan Traffic district there is a single full-time Commissioner. He frequently cooperates with the Commissioner of Police, who still controls purely local traffic.

The jurisdiction of the Traffic Commissions provides room for more discretion and skill than does any other case of administrative control over public utility undertakings. In the licensing and regulation of public service vehicles, as defined in Parts IV and V of the Road Traffic Act, the Commissioners are called upon to decide such matters as whether an application will conduce to the coordination of all forms of transport; whether if a new license is granted, existing services can be maintained at a reasonable profit; whether the proposed service will be necessary, regular, and adequate; whether vehicles are fit and in proper repair; whether rates are reasonable; whether conditions of employment laid down in the Act are observed; and whether, and under what circumstances, licenses should be revoked.

One of the most difficult provisions of all states that "where desirable in the public interest the fares shall be so fixed as to prevent wasteful competition with alternative forms of transport"—a stipulation that pits the railways against almost every new application. With reference to the powers accorded to administrative officials by the Road Traffic Act, the Secretary to the Ministry of Transport has written, "I would ask you to note the marked degree of administrative discretion which is accorded to and indeed enjoined upon the Traffic Commissioners. They must, of course, act impartially and in a judicial manner and spirit. The statute itself gives guidance, in considerable detail—but much is left to their skill and common sense in solving their problems."

The Minister of Transport has power to issue general directions to the Commissioners, and appeals may be taken

to him from the decisions of the several commissions. During the first year the plan was in operation seven appeals against refusals of certifying officers to grant certificates of fitness were received, and of these three were withdrawn, three were dismissed, and one had not been disposed of. Two appeals were received against the refusal of Commissioners to grant public service licenses; one of these was withdrawn and the other dismissed. Of twelve additional appeals on other grounds, only one case was decided in favor of the appellant.[1] "The most difficult task which lies at the threshold of any system of enforcement," states Sir John Brooke, a former Secretary to the Ministry of Transport, "is the determination of a standard." After pointing out that the coordination of long-distance omnibus services with the main-line railways is an uncharted sea, the same writer observes:

> "I see no criterion by which the need for a road service between, let us say, Bristol and Birmingham or London and Manchester, can be tested except the inclination of the passengers. No ground exists for branding such competition as unfair unless the road service is not contributing its proper share to road maintenance or rates and taxes, and that can be adjusted by older methods without the assistance of the Commissioners."[2]

So long as this view obtains, the public may be assured that the national economy is being soundly and fairly developed.[3]

[1] *First Annual Report of the Traffic Commissioners*, op. cit., 4.

[2] Brooke, op. cit., (1930) 8 *Pub. Admin.*, 160.

[3] A recent instance of the difficulties of giving satisfactory weight to the coordination of national transport facilities may be of interest. An existing coach service applied to the Metropolitan Traffic Commissioner for permission to transport ships' crews between London and Liverpool at the rate of 20s. round trip. The demand had been created by sailors who sought cheaper means of returning to their homes; full coaches were guaranteed and it was conceded that the company could make a reasonable profit. The existing bus rate was 27s. 6d. and the regular railway fare was 49s. 6d., but the Railway Rates Tribunal had authorized an exceptional rate of 33s. in order that the railways might cater for the traffic. Counsel for the railways contended that if the application were granted, the railways would lose all of their traffic from that source, because of the "uneconomic" rate. They relied upon the coordination provision of the Act to defeat the application. "What is the public interest?" demanded the attorney for the coach operators. "Is it the travelling

Attempts to bring about the effective regulation and coordination of existing forms of national transport are almost sure to prove ineffectual so long as rail and road services are competitive and are under the control of different tribunals. The Railway Rates Tribunal stated recently, "It is difficult to see how the standard revenue can be realized now that a rate-cutting struggle has been forced upon the railways." At the same time road operators constantly complain that the railways attempt to undercut them as soon as new rates have been fixed.

The Royal Commission on Transport, 1929–31, concluded after a thorough investigation of the results of competition that "It appears to us that without unification —however it may be accomplished—no attempt to bring about complete coordination would be possible." Four different methods of unification suggested themselves, namely, nationalization, rationalization, a combination of both of these, or the formation of a public utility trust. Although it was impossible for all twelve of the members of the Commission to agree on one solution, the report states "We are all impressed with the immense importance of internal transport as the handmaid of British industry, and we are all agreed as to the necessity of making it as cheap and easy and efficient as possible. Some of us hold strongly that this can best be done by the adoption either of nationalization or, alternatively, by the formation of a National Transport Trust."[1] Three members of the Commission

public or the railways? I submit that the standard revenue requirement of the railways is an irrelevant consideration." However, the application was refused on the ground that so great a reduction would be injurious to the regular services of existing operators. The Commissioner, who said he attached great importance to the principles laid down in this case, concluded that "The evidence convinces me that adequate and convenient facilities . . . have for many years been provided by the railway companies, and that if the present application were granted, the general effect would not be to create new traffic, but to divert traffic from the railways to the applicants, and that the tendency of granting reduced fares in services of this character would be to injure the standard fares of regular road and rail facilities." Application of J. Pearson and Sons, dismissed by Metropolitan Traffic Commissioner, February 1933.

[1] *Final Report*, 172–174. Cmd. 3751.

developed their ideas further in an Appendix and suggested principles which are likely to carry great weight in future years. As the inevitable result of existing conditions, they submitted,

> "(1) Competition is not a possible solution and is incompatible with coordination; (2) Coordination can only be attained by unification; (3) Unification, through the preponderance of one form of traffic over another, in a given area, is not desirable, and would not have the support of public opinion; (4) Consequently, unification which is desirable in the public interest can only be brought about through some form of public control or ownership; (5) Public ownership combined with commercial management should operate through a National Transport Trust, perhaps in the form of a statutory corporation, free from all political and governmental interference. It should manage the coordinated transport facilities in the interest of national industry and trade: in other words, it should operate for service rather than profit."

CONCLUSION

Railway regulation is weakened by the multiplicity of administrative agencies and the consequent division of responsibility. The Railway Rates Tribunal has proved an efficient organization, but its jurisdiction is limited and its utility has been circumscribed by the economic impossibility of meeting the standard revenue requirements established in 1921. Rate regulation is unavoidably chaotic. Uneconomic capitalization is seen in the comparatively high level of charges which must be borne by industry and by the travelling public.

Regulation might be improved by readjusting the revenue expectations of the railways in accordance with a reduced capitalization, by amalgamating the work of the Railway and Canal Commission and the Railway Rates Tribunal, and by increasing the powers of the Rates Tribunal. But it is extremely doubtful if more effective regulation would get at the roots of the transport problem. Conditions have radically changed in ten years.

Since the war the adjustment of disputes between the

companies and the employees has been effectively settled by a framework of collective bargaining boards. The wages and conditions of railway labor have been substantially improved since 1913. In recent months, however, the apex of the negotiation structure, the National Wages Board, has failed to satisfy the companies and therefore a new plan of national conciliation must be created. The future of railway labor relations appears to be unsettled and strained.

Minor adjustments will not solve the plight of the railways. If their financial structure were completely overhauled, if unification took place, and if great improvements in operating efficiency were brought about, the problems of competition and coordination would remain. Road competition has completely altered the problem of railway regulation. The community will never permit the railways to obtain financial control of road transport, and not for long would it permit rival forms of transport to be weighed down by onerous burdens and restrictions. National coordination of transport facilities under some form of unified control is a likelihood of the next few years. Fortunately, the British are more adept at the art of public administration than they are at the tactics of regulation!