Washington University Law Review

Volume 25 | Issue 3

January 1940

Review of "Studies in Administrative Procedure: Attorney-General's Committe on Administrative Procuedure, Monograph 8, Railroad Retirement Board," By Department of Justice

Charles M. Hay
St. Louis Bar Association

Carroll J. Donohue
St. Louis Bar Association

have been met. The first complaint is that federal supervision of licensed inspectors is not uniformly exercised. In the busy season much grain is loaded into warehouses past inspectors who are inadequately supervised. At a later date when the grain is loaded out of the warehouse a much closer supervision may be exercised over the inspection. The result is that grain which was loaded into a warehouse as one grade may come out of the warehouse as another grade, although the only difference lies in the kind of inspection given.

The second complaint is that while the inspectors are licensed, the samplers are not. In a rush period inexperienced men may be employed to sample cars. An inspection can be no better than the sample. If, for example, a sample is merely a pan-full of grain scooped off the top of the car, it would be the merest accident if it accurately represented the entire contents of the car. If samplers were required to be licensed by the federal government, the objection might well be obviated.

The third complaint is that in many, if not most, instances the Board of Appeal uses the Supervisor's sample instead of its own. The monograph states that either practice may be followed by the Board. It has been suggested by persons in the trade that the Board should always draw a new sample by a competent person of its own selection.

RALPH R. NEUHOFF.†

MONOGRAPH NO. 8, RAILROAD RETIREMENT BOARD.

The Railroad Retirement[1] and Unemployment Insurance[2] Acts represent a significant departure from the time-honored, but unrealistic theory that regulatory measures concerning the labor relationship need go no farther than the actual terms and conditions of employment. Of late, the view has become generally accepted that unless satisfactory provisions are made for the care of railroad employees who are separated from the service because of advanced age, consolidation of several carriers, or technological change, men in the service will be under such a sense of insecurity and uncertainty as will affect their efficiency and lead to unrest and strife obstructing transportation.[3] The provisions of the above acts which recognize these truths and which purport to remedy the asserted evils may be briefly stated. The Railroad Retirement Act applicable to carriers by railroad[4] provides for

---

† Lecturer in Law, Washington University.

1. Railroad Retirement Act of 1937, 50 Stat. 307, c. 282, (1939 Supp.) 45 U. S. C. A., sec. 228a-228r.

2. Railroad Unemployment Insurance Act of 1938, 52 Stat. 1094, c. 680, (1939 Supp.) 45 U. S. C. A., sec. 351-367.

3. United States v. Lowden (1939) 60 S. Ct. 248; also see dissent of Mr. Justice Hughes in Railroad Retirement Board v. Alton R. R. (1935) 295 U. S. 330, 374, which invalidated the Railroad Retirement Act of 1934 on the dual grounds that it was beyond the proper scope of the commerce clause and amounted to a deprivation of due process.

4. Railroad Retirement Act of 1937, 50 Stat. 307, c. 282, (1939 Supp.) 45 U. S. C. A. sec. 228a-228r.

railroad employees a scheme of social security under which three general types of benefits are payable: (a) annuities; (b) death benefits, in the absence of specified annuity payments; (c) pensions to certain employees. Funds for such payments and for the costs of distribution come from an "income" tax levied on the employee and an "excise" tax levied on the carrier. The Unemployment Insurance Act provides for payments under specified conditions for each day of unemployment suffered by certain railroad employees. Payments under this act are made from funds accumulated from contributions by employers of 3 per cent of the compensation paid to employees under the act. The administration of both acts is entrusted to the Railroad Retirement Board, although the machinery for the unemployment insurance act has not been fully developed.

The monograph dealing with the Railroad Retirement Board directs itself to a dual task, first of analyzing the statutes and the practice and procedure under them, and second, of constructively criticizing them. The finished work will certainly prove helpful both to the advocate who must practice before the Board and to the legislator who may contemplate changes in the presently existing statute. If anything tends to mar the merit of the monograph, it is the fact that the descriptive paragraphs are frequently fused with the critical paragraphs in such a manner that the result is a confusing intermingling of description, suggestion and criticism.

Attention might well be directed to the fact that in determining "total and permanent disability" claims the Disability Rating Board makes its rating solely on the basis of a medical report submitted by a physician who has examined the applicant. The personal appearance of the applicant either before the Board or a regional officer would appear to be preferable. Although the report of a competent physician is significant evidence of physical condition, the issue of disability involves additional considerations of a pragmatic nature which should be passed on by men who by observation have first-hand knowledge of the incapacity necessary to render a man totally unable to perform a given task on the railroad. Then, too, the widely varying opinions that expert medical witnesses may have as to the permanency of a given injury are well known to the experienced trial lawyer. Certainly it is unsafe to permit a medical report to be the sole basis for the determination of an issue as vital as that here at hand. The committee recognizes this problem, but makes the rather inadequate suggestion that a solution would lie in further amplification of the medical report. The mere paucity of total disability claims scarcely justifies the present practice. A relatively small group of ambulatory regional officers would go far to remedy the evil complained of.

A simplification and easing of the process of appealing from the Claims Service, the body which determines claims in the first instance, to the Appeals Council is to be recommended. The right to appeal becomes somewhat illusory and empty when one realizes that all such hearings on appeal are held in Washington, D. C. A trip to Washington with its attendant expense is likely to prove a hardship or even an impossibility for the disabled or the unemployed person who may be grasping at the last straw in his effort to salvage himself from the already crowded relief lines. The

facts that only a negligible number of such appeals have been taken and that railroad employees generally regard the decision of the Claims Service as final, bear witness to the validity of this criticism. A solution lies, of course, in the establishment of regional Appeals Council offices. We do not find the Committee's rationalization of the present practice persuasive. The fact that employees may be able to get free transportation to Washington scarcely warrants the holding of all Appeals Council hearings there.

Most of the suggestions made by the committee are well taken and merit detailed consideration by the Legislature and the Board. The mass of rules, regulations, and decisions which have been promulgated by the Board should be brought together in a well-indexed, practical loose-leaf publication. An applicant should be more fully apprised of evidence which has been incorporated into the Appeals Council's record as a result of investigation and not hearing. The task of preparing decisions of the Appeals Council should be split up among its members rather than placed almost entirely upon its chairman. The limited scope of this review prohibits discussion of all factors which deserve comment.

The series of monographs analyzing the procedures of the several administrative tribunals undeniably makes a substantial contribution to the mass of research material which will assure a well-advised development of the rapidly expanding field of administrative law.

CHARLES M. HAY†
CARROLL J. DONOHUE.†

† Members of St. Louis, Missouri, Bar.