

FINANCE DOCKET No. 11662
NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY
REORGANIZATION

Submitted June 21, 1937. Decided July 13, 1937

Upon petitions of Vincent Dailey and of Frederick E. Lyford for an order ratifying their appointment as trustees of the debtor's property, appointment of Frederick E. Lyford ratified and ratification of appointment of Vincent Dailey denied.

Vincent Dailey and Frederick E. Lyford for themselves.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, PORTER, AND MAHAFFIE

BY DIVISION 4:

The New York, Ontario and Western Railway Company, hereinafter called the debtor, on May 20, 1937, filed in the United States District Court for the Southern District of New York, a petition for the purpose of effecting a plan of reorganization in accordance with section 77 of the act of July 1, 1898, entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States", as amended. On the same day the petition was approved by the court as properly filed, and the court ordered among other things that the debtor, pending further order of the court, operate and maintain its railroad and property and manage and conduct its business as a railroad company. On June 15, 1937, the court, after hearing, made and entered an order appointing Vincent Dailey and Frederick E. Lyford trustees of the debtor's property, subject to ratification by us. Copies of the above-mentioned petitions and orders have been duly filed with us by the clerk of the court.

Under the provisions of subdivision (c) (1) of section 77 of the Bankruptcy Act, as amended, such appointments become effective only upon ratification by us, with or without a hearing as we may deem necessary. On June 18, 1937, the nominees filed petitions with us for ratification of their appointments, setting forth as to each of them their education, experience, and business relationships.

It appears that Dailey has been engaged in business of a commercial nature for 18 years. For two years he was associated with the

New York State Democratic committee, and for three years was New York State manager for the Home Owners Loan Corporation. At present he is associated with the chairman of the board of the Bulova Watch Company in a consulting capacity.

Lyford has been employed by steel and machinery companies, and served during the war as first lieutenant in the United States Army. He was employed by the Lehigh Valley Railroad Company from 1923 to 1933 in mechanical and special engineering capacities, and from February 1934 to September 1936 as an examiner with the railroad division of the Reconstruction Finance Corporation. Since the latter date he has been assistant to the vice president and director of sales of the Baldwin Locomotive Works. Neither of the petitioners has ever been connected with the debtor, or with any subsidiary corporation or any holding company connected therewith. Dailey expects to continue his present connection with the watch company if his appointment is ratified, but Lyford expects to sever his connection with the locomotive company if his is ratified.

The president of the debtor appeared at the court hearing on the appointment of trustees and stated that he could not accept the appointment because he could not devote to the position sufficient time to properly perform the duties, as he was chairman of the board and agent of the trustees of the New York, New Haven & Hartford Railroad Company and also president of the Railroad Credit Corporation, which is engaged in liquidating a rather large trust fund for the railroads of the country. He further pointed out that were he to serve as trustee the provisions of section 77 would require the appointment of a cotrustee and it was his opinion that the debtor ought not to be required to undergo this additional expense.

The debtor is a class I railroad, but its property and operations are not very extensive. It would appear that one trustee should be sufficient to serve properly the interests of all parties. The experience of Lyford includes 13 years with railroads or dealings with railroad problems. His appointment meets with the approval of a group of institutions holding about 40 percent of the debtor's bonds and he would be able to devote all his time to his duties as trustee without any outside interests. It does not appear that Dailey has had any experience with railroads or railroad problems. It is probable that either of the appointees would find it necessary to retain most or all the debtor's present officers to conduct its operations. Under the circumstances we are of the opinion that we should ratify the appointment of Lyford as sole trustee.

Conclusions.—We conclude, that the appointment of Frederick E. Lyford as trustee of the debtor should be ratified and that ratification

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of the appointment of Vincent Dailey as such trustee should be denied. An appropriate order will be entered.

MAHAFFIE, *Commissioner*, dissenting in part:

The trustee of this property, in addition to operating the railroad, will be greatly concerned with the coal business. Under all the circumstances I think two trustees are justified. I would ratify both.

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