

FINANCE DOCKET No. 16575¹

LACKAWANNA & WYOMING VALLEY RAILROAD COMPANY REORGANIZATION

Decided April 20, 1959

1. Appointment of Lynn B. Coleman as successor trustee of the properties of the Lackawanna and Wyoming Valley Railroad Company, debtor, ratified conditionally.
2. Acquisition by The Delaware, Lackawanna and Western Railroad Company of control of the Lackawanna and Wyoming Valley Railroad Company, through the appointment and service of Coleman as trustee, approved and authorized, subject to conditions.

Norman Harris and E. M. Watters, Jr., for successor trustee.

Rowland L. Davis, Richard E. Costello, Charles E. Boles, and Newell Blair for applicant in Finance Docket No. 19470.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MITCHELL, ARPAIA, AND WALRATH

BY DIVISION 4:

A creditor's petition for the purpose of effecting a plan of reorganization of the Lackawanna and Wyoming Valley Railroad Company, debtor, under the provisions of section 77 of the Bankruptcy Act, 11 U.S.C. 205, was filed on May 13, 1949, in the District Court of the United States for the Middle District of Pennsylvania, in proceedings No. 10621, and by order dated June 24, 1949, the court approved the petition as properly filed. Subsequently, the court appointed E. McLain Watters as sole trustee of the debtor's property, and we ratified the appointment. On February 6, 1959, the court approved the plan of reorganization of the debtor, which had been approved by us and certified to the court. See *Lackawanna & W. V. R. Co. Reorganization*, 295 I.C.C. 653, which embraced Finance Docket No. 19470, Lackawanna & Wyoming Valley Railroad Company Control. On February 3, 1959, the court granted Watters' request to be relieved of his duties as trustee of the debtor and appointed Lynn B. Coleman as successor trustee, effective February 28, 1959, or as soon thereafter as he qualifies. A copy of the court's order has been filed with us. Under the provisions of subdivision (c) (1) of section 77, the appoint-

¹ This report also embraces Finance Docket No. 19470, Lackawanna & Wyoming Valley Railroad Company Control.

ment of a trustee becomes effective upon ratification by us and the filing of a suitable bond.

On February 10 and February 17, 1959, Coleman filed an application and a supplemental application, respectively, requesting ratification of his appointment. No objection thereto has been received.

The debtor's line consists of a standard-gage, single-track railroad extending between Scranton and Wilkes-Barre, Pa., a distance of about 19 miles. It is presently operated in freight service only. It connects with lines of The Delaware, Lackawanna and Western Railroad Company, hereinafter referred to as the Lackawanna, the Erie Railroad Company, and the Lehigh Valley Railroad Company, for the interchange of freight.

Prior to our approval of the plan of reorganization of the debtor, the Lackawanna had acquired about 80 percent of the outstanding 5-percent first-mortgage bonds of the debtor and, therefore, it would be entitled to receive under the plan about 80 percent of the stock and other securities issuable by the reorganized company. Accordingly, it filed an appropriate application under the provisions of section 5(2) of the Interstate Commerce Act for an order authorizing it to acquire control of the reorganized company through ownership of stock. Hearing on that application, in Finance Docket No. 19470, was held jointly with the hearing on proposed plans of reorganization filed in Finance Docket No. 16575. Our report in *Lackawanna & W. V. R. Co. Reorganization, supra*, stated that acquisition by the Lackawanna of control of the reorganized company appeared to be consistent with the public interest, but entry of an order authorizing such acquisition was deferred pending confirmation of the plan by the court.

Coleman was born on July 21, 1915, at Fairview, Utah. He graduated from high school at Salt Lake City, Utah, and thereafter studied for 3 years at the University of Utah. He has been engaged in the railroad business at least since 1935, and presently holds the position of assistant general manager of the Lackawanna, with headquarters at Scranton. He is not now and never has been an officer, director, or employee of the debtor, or any subsidiary of the debtor. Other than a first mortgage on his home, he is not under financial obligation, direct or indirect, fixed, contingent, or otherwise, in excess of \$4,000 to any one person or concern.

By supplemental application under section 5(2) of the Interstate Commerce Act, filed February 17, 1959, the Lackawanna seeks authorization and approval of the acquisition of such control of the debtor as may result from the appointment of Coleman as trustee. Lackawanna states that the debtor's operating expenses are now and for some time past have been in excess of operating income, and it believes

312 I.C.C.

that Coleman as trustee will be able to effect substantial operating economies which will be beneficial to the debtor's estate. It contends, however, that the appointment of Coleman as trustee will not in any manner give it control of, or the power to control, the debtor, and asserts that the debtor with Coleman as its trustee would still be controlled by the court. In the circumstances, the Lackawanna contends that its supplemental application is not necessary and moves for the dismissal thereof.

We are unable to agree with the Lackawanna's position with respect to our jurisdiction under section 5 of the act, and its motion will be overruled. It appears that the sole purpose of arranging for the appointment as trustee of Coleman, an employee of the Lackawanna, is to give the Lackawanna the power to control or manage the considered operations. Coleman's initial application for his ratification refers to our prior report and to the findings therein that substantial economies could be effected in the debtor's operations under Lackawanna control, and states "The Debtor has suffered a loss of traffic which requires putting into immediate effect both the economies and efforts to increase traffic expected to be achieved through the reorganization of the debtor." The supplemental application of the Lackawanna refers to recent losses from the debtor's operations and represents that through the appointment of Coleman, "and through such control of the debtor by the applicant as may result from such appointment," substantial economies can be made in the operation of the debtor. For a description of the economies which thus may be effected, Coleman refers to the portions of our prior report which indicated that substantial economies could be effected by close coordination of the operations of the Lackawanna and the debtor, the conduct of certain operations on a joint-facility basis at Scranton, and supervision of the debtor's operations by supervisory personnel of the Lackawanna. It is apparent that the Lackawanna proposes through Coleman, pending confirmation of the plan, to exercise substantially the same measure of managerial control which it will exercise after the plan is consummated. In this connection it is significant that Coleman will receive no compensation from the debtor's estate but must look to the Lackawanna for compensation for such services as he may perform in behalf of such estate. It is true, of course, that Coleman at all times will be subject to the superior authority of the judge but this fact does not exclude the day-to-day exercise of managerial control by the Lackawanna. Compare *Colletti—Control—Comet Freight Lines*, 38 M.C.C. 95, 97-98; and *Tucker—Control—Mercury Motorways, Inc.*, 40 M.C.C. 797. In our opinion, we have complete jurisdiction in the premises.

312 I.C.C.

On the merits, we see no reason for withholding our ratification of Coleman's appointment or our approval of the control which indirectly will be acquired by the Lackawanna. Obviously, it is desirable and consistent with the public interest, pending completion of proceedings necessary before the plan of reorganization heretofore approved may be consummated, to reduce the operating losses which presently are being sustained. This will benefit the debtor's estate and, indirectly, the Lackawanna which, when the plan is consummated, will own the majority interest in the reorganized company. Coleman, personally, appears well qualified by experience to perform the duties which he will assume as trustee, and under the circumstances his concurrent occupancy of a position with the Lackawanna will not give rise to conflicts of interest which would be incompatible with the public interest. No objection to his ratification has been made.

The acquisition of control will not result in any increase in the fixed charges of either of the carriers involved, but should result in improved transportation service to the public. No other railroad has requested that it be included in the transaction. The approved plan of reorganization provides that the authorization by us of the acquisition of control of the reorganized company by the Lackawanna shall be granted upon conditions for the protection of employees who may be adversely affected thereby similar to the conditions prescribed in *New Orleans Union Passenger Terminal Case*, 282 I.C.C. 271. The authority herein granted to the Lackawanna will be subject to the same conditions.

CONCLUSIONS

We find that we should ratify the appointment of Lynn B. Coleman as successor trustee of the property of the debtor, provided that he shall receive no compensation from the debtor's estate except such as he hereafter may be allowed by the judge for his services as trustee, within such maximum limits as we may approve as reasonable.

Subject to the conditions with respect to the protection of employees, we find that the proposed acquisition by The Delaware, Lackawanna & Western Railroad Company of control of the operations of Lackawanna & Wyoming Valley Railroad Company, debtor, through the appointment and service as trustee of the latter of Lynn B. Coleman, is a transaction within the scope of section 5(2) of the Interstate Commerce Act, as amended, that the terms and conditions proposed are just and reasonable, and that the transaction will be consistent with the public interest.

An appropriate order will be entered.

COMMISSIONER MITCHELL dissents.

312 I.C.C.