

1st MONDAY 3rd MONDAY

Prepared for employees by the
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Managers and Supervisors:

"Continued operation of the Milwaukee Road for any length of time is almost entirely dependent upon financial relief from Congress. Congressional action is the only foreseeable alternative." With those warnings to the legislative branch of government, and a sentence or two which suggest that he wishes that he could have ruled otherwise, Judge McMillen Friday denied Trustee Hillman's request that he be directed to embargo some 6,500 of the Milwaukee's 9,800 route-miles.

The reasoning in Judge McMillen's 16-page opinion boils down to this: He finds no statute or other authority which allows him to grant the request.

Noting that the findings of fact by Special Master Milton H. Gray, who conducted the hearings for Judge McMillen, "are supported by substantial evidence," the Court disagreed with Master Gray's conclusions of law, saying that it did so reluctantly. "We believe that the Master and the attorneys for the Trustee have conscientiously attempted to find a solution for the difficult problems of the Milwaukee Road, and the Trustee's proposal is one which we believe would promote the public interest," Judge McMillen wrote.

He then challenged the legislative process to which he bounced the ball: "However, every avenue which has been explored leads, in our opinion, to a roadblock erected primarily by the Federal government."

Judge McMillen's opinion and order denying the embargo were of course a disappointment. Witnesses for the Trustee had testified, with the support of several states and shippers, that the embargo would be necessary if anything at all of the Milwaukee were to be saved from liquidation. The ICC was ready with a directed-service plan which would have covered virtually all of the present business on the embargoed lines.

Judge McMillen's denial was also something of a surprise. Master Gray, saying that "it appears to the Special Master that approving the Trustee's requested embargo serves the public interest far better than any other available alternative," had recommended to Judge McMillen on May 24 that the embargo begin June 1.

As we indicated in the To All Concerned message Friday afternoon, the Milwaukee's business, throughout the railroad, will continue to be conducted as best we can manage, given our shortages of locomotives, cars, good track and cash. The Court's order is a denial of the request for the embargo, not the postponement of an embargo. All services and activities which were authorized before the Court entered its order are and will remain authorized pending further Court action.

Indeed, since the Milwaukee does have a shortfall of cash by some \$10 million per month, a fact which Judge McMillen acknowledged, I urge you to produce as much business for the Milwaukee as efficiently as possible, and to help hold the costs of everything we must do to the absolute minimum. This we all must do. Trustee Hillman's attorneys, in conjunction with the railroad's staff,

are already determining how, now, we can legally resolve the dilemma which Judge McMillen acknowledged to exist but which, he indicated, he is powerless to eliminate.

In his order, Judge McMillen indicated that Congress has been attempting to enact legislation with the Milwaukee in mind. Resolutions have been introduced in both houses which would postpone the effective date of an embargo if one were ordered and direct the Secretary of Transportation immediately to loan to the Milwaukee funds available under the Emergency Rail Services Act without the statutory requirement that the government thereby become the railroad's senior creditor to the extent of the loan.

The enactment of this legislation would only postpone the day on which there is not enough cash to run the entire Milwaukee Road -- there being only some \$50 million available through ERSA and no funds available through any other existing law. As you know, we already have an application before the FRA and the ICC for \$20 million in ERSA funds. The Court is expected to rule next week on whether Mr. Hillman should be authorized to issue Trustee's Certificates and borrow that amount.

Please keep in mind that no existing or proposed legislation even begins to address the real problem of the Milwaukee Road: that it is too worn out, too poorly equipped, too thinly spread over too much territory, ever to make investing what would be necessary to repair these deficiencies a manageable financial risk. If, as Judge McMillen says, Congress is the last hope of the Milwaukee, Congress at present has a big job ahead of it even to understand the size of the problem: It's a long and politically uncertain path from the \$50 million available under ERSA for temporary help to the \$1 billion necessary to rehabilitate the entire railroad. We'll keep you advised on the progress.



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