CHAPTER FOUR

The Conflict over Night Trains

In the spring of 1849, Minister of Trade, Commerce, and Public Works August von der Heydt issued an ordinance requiring Prussian railroad companies to schedule night trains to expedite the country’s mail. The directive from Berlin came as a harsh blow to private railroad companies. With day and evening trains running at significant losses, the order to introduce night trains, whose unprofitability was foreseen, came as a complete surprise. The revolution had brought trade and industry to a near standstill, and the railroads were the first to suffer from the overstocked warehouses, silent factories, and severely depressed financial markets. There was little freight to transport and even less confidence in investment. Stock quotes in 1848 fell to new lows and improved only slightly in the first half of 1849. Railroad companies drastically cut back on personnel and schedules to stave off total ruin. Three railroad companies went bankrupt and numerous others defaulted on dividends and loans.

Decreed in the name of general welfare, the government order was perceived by business circles as an act of unnecessary intervention and a new example of bureaucratic paternalism, a trait that entrepreneurs had long deplored. The order overlooked the industry’s poor financial condition, and the government failed to consult the company directors. It was doubly crushing that the order had emanated from the trade ministry—a creation of the revolution, a so-called concession to the middle classes.

The problem was significant for government-business relations. Issued four months into Heydt’s career as a state minister, the order established a tone for ministerial relations with capitalists investing in the expanding Prussian infrastructure. Combined with Heydt’s attempt to exploit below-par stock prices and buy out private lines, the policy of introducing night trains against the wishes of railroad companies alerted stockholders, financiers, and railroad directors at an early date that Prussian state interests did not always coincide with the needs of private capital. The standoff over night trains illuminates a frame of mind in the business community toward the government, an attitude
that does not correspond to the assumption of a cooperative alliance between the business class and the Prussian government. Rather, the relationship is better characterized as defensive and, at times, oppositional. The incident suggests that in the harshest years of the reactionary era, 1851-54, when the state sought to impose its political order through purges and decrees, directors of private railroad companies did not passively accept government dictates limiting their business freedoms.²

The protest from private railroad companies was considerable, both in magnitude and form. Eleven companies representing 95 percent of all Prussian private rail—60 percent of the country's total rail lines—protested in one form or another to the government, ranging from written remonstrations to lawsuits to refusals to comply with government orders.³ The controversy lasted from 1849 to 1852 but its legal decisions stretched into 1855 and its political tone resonated into the New Era.

In April 1849 Heydt ordered the Lower Silesian-Mark Railroad to run night trains between Breslau and Berlin. Although protesting the command with strong words, the company directors submitted but asked for funds to defray the cost. A subsequent stockholders’ meeting amended the directors’ decision and voted to pull the trains by horse rather than by locomotive, a measure partly to cut costs, partly to defy the government. Heydt threatened all directors with fines if they did not comply, and night trains pulled by locomotives began to run in May. The losses that year for the railway amounted to 350,000 thalers; 80 percent of that deficit, 280,000 thalers, stemmed from the cost of the night trains.⁴

Over the next three years similar demands were made on a number of Prussian railways. The Bonn-Cologne, Cologne-Minden, Prince Wilhelm, Rhenish, Berlin-Stettin, and Berlin-Hamburg railways all introduced night trains against their wishes. Every company protested. The order to introduce a night train on the Berlin-Hamburg Railway was especially questionable, because the line traversed the territories of Prussia, Mecklenburg-Schwerin, and Lauenburg and terminated in Hamburg. A branch line extended to Lübeck. An international treaty signed in November 1841 by five states—Denmark represented Lauenburg—had enabled the company to lay rail. The treaty stipulated that the railway company was to treat all governments equally; Prussia would act as the supervisor but could only expedite orders on which all parties agreed.⁵ Hamburg and Mecklenburg-Schwerin were major shareholders in the railroad and possessed an additional veto right.
Both the governments and the stockholders opposed the idea of night trains, but Heydt persisted. He maintained that the company had to follow Prussian law, because the company was registered in Prussia and its directors met in Berlin. When in April 1852 the board of directors refused to schedule night trains, Heydt threatened directors with one-hundred thaler fines for every night without a train. The fines totaled three thousand thalers before Heydt threatened the directors with a takeover and notified the now nationalized Lower Silesian-Mark Railway to prepare for the absorption of the Berlin-Hamburg administration. The company capitulated before the deadline of 15 April but sought redress in the Prussian courts and through diplomatic channels. In the following years, the company lost an average of 130,000 thalers annually, which amounted to 1.5 percent loss in dividend earnings.

It is of particular interest to follow the actions of railways in the Rhineland, for the evidence available on these lines provides us with a closer view of business attitudes toward the state in the immediate years after 1848. Like the Silesian and Berlin Railways, companies in the Rhineland and the Ruhr also protested. The first affected was the Rhenish Railway. It, too, was ordered in May 1849 to start night trains to Paris via Antwerp. In contrast to the Silesian and Berlin lines, however, the trade ministry initially underwrote the costs of the company’s night trains until January 1850. Thereafter the minister expected the company to absorb the losses, which promptly halted night service.

A director of the Rhenish Railway, Dr. Gerhard Compes, a lawyer by trade, drew up a brief outlining the company’s objections. His summary at the board meeting emphasized the ministry’s tacit recognition of the act’s illegality by initially paying for full costs without objection. After seven months of subsidies, the revocation of financial assistance for night trains constituted an inconsistent and arbitrary action. Moreover, he noted, the government had no right to change company statutes or alter timetables, for the company statutes, drafted in the early 1830s, predated the Railroad Law of 1838. Technically, then, the company did not need to seek approval for timetables as other Prussian lines did. Fundamentally agreeing with his position, the board requested that Compes, assisted by two other lawyers, review more closely the rights of the company and draw up a legal recommendation. With this recommendation, the board could then decide what course of action was most appropriate.

Gustav Mevissen, the president of the company, dissented and opened a discussion that proposed a more cautious, diplomatic approach. He noted that the Royal Railroad Commission wished to reach a settlement regarding the transport of royal mail wagons. An agreement had already been reached with the Cologne-Minden, the Rhenish Railway’s important counterpart on the right bank of the Rhine. Because the commission was anxious to coordi-
nate schedules in the western provinces, Mevissen implied that the issue was not one that could be ultimately won. Thus the problem regarding long-term strategies with the government loomed as more important. If the company decisively rejected the government demands, even if it had the legal right to do so, it had to be that much more careful in opposing Minister Heydt when he himself had legal recourse.

In this instance Mevissen believed that Heydt still had a legal leg to stand on, if only a slim one. The Railroad Law (paragraph 36, clause 3) gave the government the right to have their post coaches transported at no charge.\(^9\) Because the stipulation of night trains was not so disadvantageous, the company should look on it as an onerous concession whose long-range advantage outweighed the immediate burden. By accepting the present demand from the government, Mevissen reasoned, the company might be able to sign a separate contract more agreeable to the specific needs of the company. Through tactful compliance the company could effect a better settlement with the government’s railroad commission, perhaps even demonstrating that night trains were not needed for speedier mail service to Belgium. Persuaded by this argument, the board agreed to submit to the demand of night trains but to pursue the necessary steps for a legal defense.\(^11\) The company’s acceptance of the government’s order for night trains was couched in terms of general cooperation with minor technical disagreements, a tactic that delayed a final governmental decision. Meanwhile, a team of lawyers worked out the legal position that upheld the government’s obligation to compensate the company for night trains.\(^12\)

The delaying tactic worked until 13 November 1850, when the trade ministry ordered the resumption of night trains as of 1 January 1851 without compensation. Punitive threats accompanied the directive; the ministry demanded that the Railroad Commission fine each director one hundred thalers for failure to obey the order.\(^13\) The company’s directors, strengthened by the unanimous assertion of seven lawyers that compensation was necessary, defied the order, drafted a letter of rejection to Heydt, and waited for the trade ministry to bring suit against the company.\(^14\) From January to March the directors, in cooperation with their technical and administrative directors, refused to run night trains. In April Heydt threatened the company with sterner measures. Faced with a possible government takeover of the company’s administrative posts, the directors temporarily capitulated and reintroduced the night trains while preparing for the lawsuit. A victory in court, the protocol reassuringly noted, would reimburse the company’s losses.\(^15\)

News of the lawsuit prompted other Prussian railways to take action. Heinrich von Wittgenstein, former district governor and president of the Cologne-Minden Railway, wrote the directors of the Rhenish Railway and expressed his company’s disapproval of Heydt’s imperious behavior. He, too,
had protested against the “dictated changes” in the train schedule, “partly because they [the changes] are unfeasible, partly because they oppose the company’s interests.” Wittgenstein stressed that they were not alone. Many of the neighboring railways, he believed, would reject the demands as decisively as the Rhenish Railway. “Like us,” he wrote, they were “equally worried that the interests of railroad companies were endangered to a great degree, if the overbearing behavior of Berlin toward railways regarding mail connections was not vigorously opposed.” Wittgenstein invited the directors to attend a conference of all private railway companies within the jurisdiction of the Rhineland-Westphalian Railroad Commission in order to adopt a common response to the “increasing encroachment of the trade ministry.”

On 23 April 1851 directors of the Rhenish, Cologne-Minden, Prince William, Bonn-Cologne, Münster-Hamm, and Düsseldorf-Elberfeld railways met to form a united front protesting the schedule changes dictated by Heydt. The written protest disputed the government’s interpretation of paragraph 36 of the Railroad Law that allegedly empowered the state to introduce night trains against the will of the railroad companies. In addition, the meeting brought about the collective decision to disobey Heydt’s order to run night trains for the summer schedule. The meeting’s resolutions were the first acts of disobedience against the new trade ministry. The conference further revealed railroad directors’ willingness to organize in defense of private business interests. A corporate spirit of mutual cooperation began to evolve.

The protest to Heydt, drawn up by the directors of the Bonn-Cologne and the Cologne-Minden Railways, addressed the problem of coordinating railroad schedules with postal administration. According to paragraph 36 of the Railroad Law, the two operations should be adjusted “so far as the nature of the business permits it.” Relations had soured, the directors inferred, because the ministry failed to apprehend the “nature” of railroad companies and what was “permissible” as a business practice. Railways operated under the joint-stock principle, which obliged directors to fix prices so that capital investment yielded a dividend for their investors. The essential factor for a joint-stock company was efficient management. Its directors, entrusted with stockholders’ money, were obligated to promote profit. Imposed regulations that drastically minimized profits could inflict irrevocable harm to the “nature” of railroads. The falling value of railroad stocks was inversely proportional to the rising scarcity of investors inclined to offer funds under such conditions. Not only were expansion and prosperity put in doubt, but the order also threatened the viability of the entire industry. The diminution of already poor dividends would imperil investment, the lifeblood of a capital-starved industry.

In this instance, the economic philosophy of these railroad directors was clearly one of laissez-faire liberalism. The market decided the necessities of
life. The interests of the public and joint-stock companies, argued the direc-
tors, go hand in hand: "Like manufacturers and merchants, companies must
satisfy the customer. A train that is needed and meets a demand will be occu-
pied and pay for itself. Its installment would not be objected to. It is another
question, however, when a train is installed to transport merely a mail bag,
especially when a rider and horse could punctually expedite the matter with­
out much cost and difficulty." 22

The companies did not oppose promoting the general good, which was in-
vitably Heydt’s defense; they merely measured it by the yardstick of market
conditions. If the government insisted on nightly mail trains, it must subsidize
them until the service became profitable; it could not expect the investors to
do so. This “immoderately extended use” of the government’s right to influ-
ence timetables robbed directors of their managerial role, for a government
agency was assuming responsibility for the financial interests of company
stockholders. 23 More crucially, the letter expressed a sharp distrust of the way
the trade ministry interpreted the law and questioned the ministry’s actual in-
tentions. The minister’s implementation of the law contradicted, the directors
believed, the “obvious intention of the law to define reciprocal privileges.”
The unreasonable demands amounted to “an interpretation that subjects one
party to the arbitrary will of the other.” 24

But why was the spirit of the law broken so blatantly by the trade min-
istry when the finance ministry and railroad companies had cooperated with
one another for years? The entrepreneurs believed the answer lay in Heydt’s
desire to nationalize railways and in his intent to use night trains to drive down
dividends in order to purchase railways at a radically cheaper price. The Rail-
road Law allowed the government the right to appropriate railways, provided
the company was fully remunerated. The criterion of full remuneration was to
pay the company twenty-five times the average of yearly dividends paid out
in the last five years. By driving down dividends to unacceptable levels and
thereby maintaining the bear-market trend that had begun with the financial
crisis of 1846 and continued through 1849–50, the government could purchase
companies at unrealistically low prices. The implication of Heydt’s aims was
guardedly formulated but nonetheless accusatory:

When, now, it lay in the legal power of the state to enforce orders against
the wishes of private companies—orders that did not absolutely fulfill the
needs of general welfare—which lowered the income or dividends to a pre-
ferred minimum, so also would the buying prices of railroads be lowered. In
other words, the state could become the judge in its own affairs and possess
the means to render illusory—under the appearance of legality—the noble
intention of the law and thus dispossess a private party, which in good faith
had given its trust to the government. 25
The accusation was not based on mere speculation. By introducing night trains on the Lower Silesian-Mark Railway, Heydt had indirectly caused immense losses, which in turn allowed the government in 1849 to take over the administration of the railroad. The petition charged the government with unfair trading and mocked its self-image as an impartial arbiter of the public welfare. A “judge in its own affairs,” the ministry interpreted the commercial code to favor its own financial interests. But Heydt continued on his course. In directives to several railway companies in the Rhineland he ordered new night trains for the summer schedule and rejected the Rhenish Railway’s request for either compensation or suspension of its night trains to Belgium.

In June 1852 he took even harsher steps against the Bonn-Cologne Railway, a local railroad line of forty-three kilometers with little significance in the Prussian rail network for either freight, passengers, or mail. This small railroad company refused to obey the new order for night trains without a subsidy, maintaining that the government, in imposing such dictates on private companies, was overextending its authority. In response Heydt authorized Hans Hugo von Kleist-Retzow, the newly installed provincial governor of the Rhineland province, to give the company a deadline of five days to comply. When the deadline was not met, the government fined the company directors one hundred thalers each per day and, more important, drew up a protocol that transferred control over the company’s administrative duties to the Royal Railroad Commission. Heydt insisted that the company pay for the costs incurred by the government’s assumption of administrative duties and, furthermore, proposed to create a new government agency solely to administer the railway if the company “persisted in its oppositional behavior.” Of course, Heydt noted, the “obstinate company directors” would have no role in this new administration.

The Bonn-Cologne directors held out for over a month, which both surprised and worried the government. Three weeks after the administrative takeover, Heydt, concerned by the directors’ persistence, authorized the Railroad Commission to offer the return of administrative powers to the company. The commission stipulated that the company must run the prescribed night trains, but it could contest the order in court. Otherwise, the government would have to proceed with the costly step of installing a permanent state administration.

Although this proposal was rejected, a deputation of Bonn-Cologne directors met with Heydt a week later to negotiate an out-of-court compromise and achieved a modicum of success. Directors Stahl and Mühlens argued that the company had not refused to run night trains per se, but merely refused to run them without compensation. Heydt proposed that the directors resume control of the company, operate the night train as ordered, and lodge a protest against the executive order with the proper authorities. As recorded in the
company protocol, he added "that as far as he was concerned, the company should receive special consideration if the cost of night trains significantly injured its financial interests." The next day the directors officially accepted the terms of settlement, though still noting that they did not recognize the legality of the government order.

The settlement was advantageous for both sides. Heydt and his ministry were spared the burden of finding administrators to run the railway efficiently. The month-long occupation had produced a number of problems for the government. Among them was the failure of the Railroad Commission to integrate night trains into an acceptable work schedule for locomotive drivers and machinists; it instituted eighteen-hour work days in four-day rotations with a half day off—a clear safety hazard. In turn, the company directors were given honorable terms of defeat. Although they were bound to run night trains, Heydt recognized their right to seek redress and conceded that the railroad's situation constituted a potential exception to the law. They had neither won nor lost but could interpret their actions as a spirited defense of company interests at the next stockholders’ meeting. Heydt had shown courtesy when asking the company to return, and there was still a chance—as shown by the case of the Rhenish Railway—that a lawsuit could bring the compensation they thought the railway deserved.

The reconciliation between ministry and company, however, was short lived. Three weeks later, Heydt refused to retract the fines imposed on the directors, citing their "unjustified obstinacy."

That the small Bonn-Cologne Railway had the courage to defy the trade minister was owed to the victories of larger lines over the government in the courts. In April 1852 the Rhenish Railway won its decision against the trade ministry. The lower court found no merit in the ministry’s claim that the law permitted the government to assume certain supervisory duties. The ministry appealed the decision, of course, but the first round was a clear victory for private business. The Berlin-Hamburg Railway also won its first decision in 1853. The two cases sent a powerful signal to the business community that its interests could be defended against the government.

Throughout the dispute the government characterized the companies’ opposition as a stubborn defense of Manchester liberalism, a fear of innovation, or a pure willfulness to disobey the trade ministry. Heydt criticized the companies as blind to the bigger picture of national economy and thus deserving of harsh treatment. Whether this indictment of the private railroad
system was warranted is questionable. Rhenish railway companies recognized the need for a Berlin-Cologne night train and never opposed it, demonstrating a pragmatism that Heydt did not want to acknowledge. Passengers traveling from Paris or London had been obliged to stay the night in Cologne because of the lack of a night train to Berlin. Although the same companies opposed certain night trains exclusively for mail purposes, the directors responded to this need. Acting under the auspices of the North German Railroad Association, the directors of all railroads involved in expediting the Cologne-Berlin express met in 1852–53 and worked out the particulars. The success of the night express had hinged on the willingness of the Hanoverian and Brunswick governments to grant persons and baggage direct transit through their lands without changing or unloading. The state railway administrators of the two territories agreed to participate, and in 1853 an agreement was worked out.

The Prussian government, however, annulled the schedule contract, told the Brunswick and Hanoverian governments that the three governments must inaugurate a night train, and that the private companies must not influence the decision. The Prussian ministry subsequently altered the original treaty in several ways, which the directors believed outweighed the advantages of the night train. Even the Railroad Commission, Heydt's own instrument, admitted that certain provisions of the treaty (regarding the order for the Berlin-Anhalt Railway to run a fourth night train) were entirely useless. It was not the resistance of private companies but the insistent claim of the Prussian government to determine policy in northern Germany that added fuel to the continuing conflict. In this situation, as in others, Heydt worked to check the innovations of private railroad associations. Even though the Cologne-Berlin night train appeared to be unprofitable, private companies demonstrated a willingness to look beyond their own ledgers and consider greater interests. Heydt's intervention in this case appeared to be motivated more by political principle than by administrative need.

Heydt's fiat often appeared to be simply assertions of ministerial power, but he always justified them with the need to serve the general good. Evoking the needs of the postal system in 1853, Heydt ordered the Magdeburg-Leipzig line to run another night train. After a year and 70,000 thalers in company losses, however, night service was eventually canceled, because the postal authorities stated they were never interested in the train and it was a burden to them as well as the company. Not without irony, the Berliner Börsen-Zeitung noted in March 1859 that the trade ministry canceled a night train on the state-owned Upper Silesian Railway because of financial losses. Clearly Heydt's interest in regulation was not always exercised for the welfare of the post or better schedules for freight and passengers. The examples of the Berlin-Cologne night train and the Magdeburg-Leipzig mail train suggest that there
was a reasonable side to the companies’ requests and that efficiency and pragmatism did not always motivate the ministry’s actions.

Over the long run, though, the railroad companies’ opposition to night trains diminished, for the directors’ principal objection—hindrance to efficient management—lost its sting after night trains showed signs of profitability by the end of 1852. The frequency of night freight shipments steadily increased, mostly because of the coal industry, and night trains became a component of the competitive edge to draw customers. In fact, the trade ministry offered the Rhenish Railway in May 1853 the right to suspend their night trains from Cologne to Belgium; the Aachen-Düsseldorf-Ruhrorter line, a state-administered railway, the Railroad Commission explained, could assume its routes. The company, however, refused the offer. Using the same principle but reversing their previous position, the Rhenish Railway directors sent a letter to Heydt, stating they had never recognized the ministry’s right to influence their timetables and they intended to retain their night trains, “merely to promote competition with the Aachen-Düsseldorf trains.” 47 Similarly, the Berlin-Hamburg Railway, although actively involved in a suit against the Prussian government over night trains, admitted in its 1853 report to stockholders, “One large railway line after another has introduced night trains and it cannot be denied that the public, especially the businessman, have decisively demanded them—our railway cannot be left behind.” 48 Thus the legal issue over the government’s right to impose night trains on private railroad companies quickly became a moot point. Competition for freight contracts had forced the issue—in Heydt’s favor.

It was in this changed climate that the ministerial litigation against the railway companies swung in favor of the governmental position in the second and third appeals. In September 1855 the government finally won its right to refuse compensation.49 The court case with the Berlin-Hamburg Railway never actually addressed the original complaint of the stockholders and the foreign governments: the legality of imposing night trains on a private company. The Berlin court stated it had no jurisdiction to decide such a matter; the company could merely sue for compensation. The court proceeding, then, changed in significant ways. The question over the legal right of the Prussian government to order night trains fell into the background; the civil suit merely centered on whether such an order should be accompanied by compensation. Consequently, the railroad company’s role shifted from the accused to the accuser, the former always holding an advantage.50 Similarly, the Rhenish Railway case was decided not on the letter of the law but on a broader interpretation by a judge who believed trains to be the instrument of the general welfare. In so doing, commented one railroad director, the judge went beyond the law code into the sphere of national economy, something that he knew
nothing about. The most damaging evidence against the companies' cases, however, was that by 1855 they had voluntarily accepted night trains in the face of higher revenues and competition.

The Berlin-Hamburg line attempted to play its last card in the Federal Diet in Frankfurt. The Diet discussed the matter until 1858, but no decision was reached—a small yet telling example of how the Diet in its last years failed to meet the practical needs of German economic life. The Rhenish Railway stoically accepted the decision, letting it pass in its board and stockholder meetings with little comment.

It would be wrong to dismiss the night train dispute as an ephemeral affair that ended in defeat for Prussian businessmen. On the contrary, the issue remained a central question for stockholders, financiers, and railroad directors from 1849 to 1852; railroad companies held their ground, defied government orders, and won in court. It was only after railroads started to schedule night trains voluntarily that the courts accepted the government position.

As early as 1849 it was clear that the Prussian government was not entirely wedded to private railroad interests and that companies had to resist government control. The Rhenish Railway's protocols are especially revealing, for the company directors weighed their two basic options of either hard-line legal confrontation or appeasement. On the one hand, some directors evinced confidence in the Prussian tradition of lawful rule and believed their claim could be upheld legally. Yet even more revealing is the position of Mevissen, the company president, whose estimate of Minister von der Heydt and his bureaucracy was shrewd. He advised the company not to exercise its legal prerogatives for fear of the minister's long-term wrath and suggested the greater advantages of maintaining a dialogue with the trade ministry. He recognized that success in litigation would be a Pyrric victory if it antagonized this powerful minister. Although the Rhenish Railway opted for open confrontation on this occasion, we will see that this same company joined others in adopting the more pragmatic modus operandi of responding flexibly to problems with state railroad policy and negotiating a reasonable settlement out of court and the public eye. The night train dispute confirms that the business agenda was not set by the government and that cooperation between business elites and government officials could not be taken for granted. In the harshest years of Manteuffel's reactionary era, railroad entrepreneurs advocated free enterprise against state interference, showing their alacrity to use the courts to check the government's arbitrary action.

The matter was not forgotten. It became an integral part of businessmen's grievances during the elections of 1858 and in the New Era. The night trains dispute served to display the continuity of disagreements between business and government since 1848 and strengthened the argument of commercial
newspapers that businessmen had to elect deputies willing to defend business interests. The issue was furthermore used to attack Heydt personally in 1858, when it was rumored that he would not survive the New Era. The week-long rumor of Heydt's imminent dismissal in November 1858 occasioned many philippics against the minister (presumably to reinforce the prince regent's decision), and the night train dispute was incorporated into the arguments that Heydt was never a friend of Prussian business. This controversy spilled over into the political sphere, where businessmen frustrated by Prussia's business policy influenced the political agendas and platforms of liberal parties.

When we place this incident in the greater context of the aggressive government takeovers of railroads from 1849 to 1857, the introduction of an unpopular railroad tax in 1853, the controversial second reserve fund in 1857, a restrictive bank policy throughout the 1850s, the parliamentary opposition to state railways from 1855 to 1859, and the continuing policy of paternalism over joint-stock companies, we see that this issue was not an isolated phenomenon. Rather, it was an early indicator of a decade-long trend. The thousands of thalers in fines, the government takeovers of administrations, the collective action of private businesses against the government, and, of course, the protracted court cases evidence strained government-business relations in Prussia in the early 1850s.