

Decision No. 18388.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

J. H. Malone,
Complainant,

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY
Defendant.

Case No. 2321.

G. W. Hoyle, for Complainant.
Ralph W. Palmer and Edgar T. Zook,
for Northwestern Pacific Railroad
Company, Defendant.

WHITSELL, COMMISSIONER:

O P I N I O N

In this proceeding J. H. Malone, whose Post Office address is Route 2, Box 327, Sebastopol, Sonoma County, California, asks that the Railroad Commission determine the necessity for a private farm crossing across the Guerneville Branch of the Northwestern Pacific Railroad Company to serve his property and to determine the place, manner and conditions under which said crossing shall be constructed and maintained, and to fix and assess the cost and expense thereof.

A public hearing on the matter was held at San Rafael on April 20, 1927.

This complaint is filed under Section 485A of the Civil Code. Complainant is the owner of a tract of land containing in all 60.30 acres. This tract is divided into three lots, namely Lot 1, containing 27.43 acres lying between Mark West Creek on the north and the railroad right-of-way on the south; Lot 2, containing 1.76 acres lying between the railroad and the County road; Lot 3, containing 31.11 acres lying south of the County road. The tract to the west of Mr. Malone, belongs to Rebecca Malone, his wife, and contains about 92 acres. This tract is divided

into two portions by the railroad and County road, which are adjacent to each other at this location. The land east of complainant's tract is owned by one Henry Castens and one A. Pelletti. The County road and railroad diverge from each other from west to east through these properties. The latter two owners have a jointly used private crossing over the railroad at Engineer Station 331+85, and Mrs. Malone has a private crossing at Engineer Station 355+65. These two crossings, which are the only ones between said Engineer Stations, are about 2,190 feet apart.

All of the land in this locality slopes from the hills south of the County road rather steeply down to the railroad, which is on the north side of the County road, and then more gently through the low bottom lands to Mark West Creek, which marks the northerly boundary of the farms.

Mr. Malone desires a private crossing at his easterly property line at Railroad Company's Engineer Station 337+79, for the reason that his land north of the railroad is low and the easterly boundary is on a slight ridge extending northerly into the fields for some distance. He claims that a crossing at any other point would not be useful or accessible from the north during the rainy season due to the low elevation of the land which is somewhat subject to overflow.

The testimony of the Railroad Company at the hearing was practically the same as the position taken in their answer to the formal complaint. The Railroad Company is willing to grant Mr. Malone a private crossing at or near Engineer Station 337+79 if he would agree or arrange with adjacent land owners to close one of the existing private crossings already described above, as it is the desire of the Railroad Company to keep the number of private or other crossings down to a minimum in the interests of safety and service on the railroad with which position the Commission is in accord. However, it appears from the record that a cross-

ing on the west side of his land for the joint use of Mr. Malone's property and that of his wife would not be in a satisfactory position physically as already stated, and would be inconveniently located for use in connection with the property of Mrs. Malone. Since the hearing, the Commission has communicated with both Mr. H. Castens and Mr. A. Pelletti, users of the private crossing east of Mr. Malone's property and they have both replied that it would not be convenient to them to have their crossing moved. Obviously, Mr. Malone has no control over their rights or desires nor are their rights before us in this proceeding.

The Railroad Company's representative testified that the location of a crossing at Engineer Station 337+79 would place it at the end of a twelve foot cut, which would be a rather hazardous location. It is therefore desirable to keep the amount of travel over a crossing so located as low as possible, and for that reason it would appear proper to limit its use to the one party. Although a location further to the west might be somewhat less hazardous, it would not properly fulfill Mr. Malone's needs. It would therefore appear that the crossing should be constructed at the location applied for by Mr. Malone. The following form of order is recommended:

O R D E R

A public hearing having been had on the above entitled proceeding, the Commission being apprised of the facts, the matter being under submission and ready for decision,

IT IS HEREBY ORDERED that permission be and it is hereby granted to J. H. Malone to construct a private crossing at grade across the right of way and track of the Guerneville Branch of the Northwestern Pacific Railroad Company at or near Railroad Company's Engineer Station 337+79.

Said private crossing to be constructed subject to the following conditions, viz:

(1) The entire expense of constructing the crossing shall be borne by complainant, J. H. Malone. The cost of maintenance of that portion of said crossing up to lines two (2) feet outside of the outside rails shall be borne by complainant. The maintenance of that portion of the crossing between lines two (2) feet outside of the outside rails shall be borne by Northwestern Pacific Railroad Company.

(2) The crossing shall be constructed of a width not less than sixteen (16) feet and at an angle of ninety (90) degrees to the railroad and with grades of approach not greater than six (6) per cent; shall be constructed substantially in accordance with Standard No. 1, as specified in General Order No. 72 of this Commission; shall be protected by suitable private property signs and shall in every way be made safe for the passage thereon of vehicles and other road traffic.

(3) Said crossing shall be equipped with a suitable gate in the right-of-way fence on each side of the crossing. Said gate shall be kept closed at all times except when crossing is in actual use by complainant or his successors in interest.

(4) Northwestern Pacific Railroad Company shall, within thirty (30) days thereafter notify this Commission, in writing, of the completion of the installation of said crossing.

(5) If said crossing shall not have been installed within one year from the date of this order, the authorization herein granted shall then lapse and become void, unless further time is granted by subsequent order.

(6) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper and to revoke its permission if, in its judgment,

the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

For all other purposes this Order shall become effective twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 24th day of May, 1927.

Emmuel C. Smith

H. B. ...

C. Seaver

John S. ...

Commissioners.