Decision No. 18875

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the TOWN OF HAYWARD, for an order directing Western Pacific Railway Company to remove a fence maintained by said Company across "C" Street, in the Town of Hayward, and to construct a crossing across the tracks of said railway company so as to pormit the use of said street by the general public.

) Application No. 12985.

C. W. White, for the Town of Hayward, George Scruggs, for The Western Pacific Reilroad Company.

BY THE COMMISSION:

<u>O P I N I O N</u>

By and under Ex Parto Decision No. 17291 of this Commission, dated August 27, 1926, the above named applicant was granted authority to construct "C" Street in the Town of Hayward at grade across the tracks of The Western Pacific Reilroad Company. Cn April 25, 1927, The Western Pacific Reilroad Company filed a petition for modification of this order, urging in view of the hazard existent at the point of crossing, that this Commission make such further investigation as it deemed necessary and thereafter make further order with respect to the installation of safety devices at said crossing as in its opinion it considered necessary for the proper protection of the crossing.

1.

EHM

Public hearings were held thereon before Examiner Vaughan at Hayward and San Francisco, the matter was duly submitted and is now ready for decision.

The record shows conclusively that a wigwag crossing signal is necessary for the proper protection of this crossing, a fact stipulated to by both the Town and the Company at the hearing. The sole question presented to us is with regard to the assessment of the costs to install and maintain this signal, both parties contending that the other should bear the entire cost thereof.

Evidence and testimony were introduced by the Town showing that prior to and at the time the Railroad Company laid its tracks in the Town of Hayward, "C" Street was a street being used by the public. It was also shown that before the Company erected a fence parallel to its track, thereby closing this crossing, the public in using "C" Street was actually crossing the railroad tracks. There is nothing in the record to show that the Company was given any authority to thus close the crossing.

In view of the foregoing, it is our opinion that it is just and equitable in this case to assess the entire cost of the wigwag signal to the railroad company. In coming to this conclusion, we are bearing in mind that this company is operating under a franchise granted to it by the Town of Eayward (Ordinance No. 84 N.S.) under which it is provided-

> "E. Said Western Pacific Railway Company shall provide efficient slarm bells at such street crossings as may be required by the Board of Trustees."

In this regard the record shows that the Board of Trustees has made a request of the Railroad Company for the installation of this wigwag signal.

2.

While we do not feel that under the Public Utilities Act we are legally bound by such a franchise provision, nevertheless, in this instance we believe that the obligation entered into between the parties should be recognized and we are taking the same into consideration as one of the guiding factors to the conclusion as above reached.

An order will be entered in conformity with the foregoing.

## <u>order</u>

The Western Pacific Railroad Company having on April 28, 1927, petitioned that this matter be given further hearing. particularly as to the necessity for the installation of an automatic flagman at applicant, Town of Hayward's, expense at the crossing of "C" Street, heretofore granted in Decision No.17291, dated August 27, 1926, in this proceeding, a public hearing having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision,

IT IS HEREBY ORDERED that the crossing of "C" Street in the Town of Hayward with the tracks of The Western Pacific Railroad Company, heretofore authorized by Decision No. 17291, dated August 27, 1926, in this proceeding, be protected by the installation thereat of an automatic flagman, the cost of said automatic flagman and its installation and maintenance thereafter to be paid for by The Western Pacific Railroad Company.

The effective date of this order shall be twenty (20) days after the making thereof.

Dated at San Francisco, California, this 44 day of · Detotier , 1927. 3.

Commissioner