

Decision No. 22853

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

-000-

THE BROTHERHOOD OF RAILROAD TRAINMEN,)
by HARRY SEE, its State Representative,)
Complainant,)

vs.)

SOUTHERN PACIFIC COMPANY,) Case No. 2844
Defendant.)

_____)

Ray D. Williamson, for Complainant

Henley C. Booth, for Defendant.

BY THE COMMISSION:

O P I N I O N

Complainant herein, Brotherhood of Railroad Trainmen, by Harry See, its State Representative, seeks an order by this Commission requiring defendant to man certain pieces of automotive track-laying equipment used by it with full crews, as required by Section 3 of "An Act to promote the safety of employees and travelers", etc., and generally referred to as "The Full Crew Law." (Stats. 1911, p. 65, as amended)

Defendant, in answer, denies the competency of complainant under Section 60 of the Public Utilities Act, to maintain action; denies that the enforcement of the act or the

imposition of any penalty for the violation thereof, are within the jurisdiction of this Commission; denies that the track-layer, which complainant seeks to have manned with a full crew, is one of the cars or vehicles described in Section 3 of the Full Crew Law, being rather a mere tool or facility, and, lastly, that this Commission has no power or jurisdiction to prescribe general rules for the operation or manning of such rail-layers.

A public hearing was conducted by Examiner Williams at San Francisco.

The facts adduced from the testimony are not disputed. Witnesses for complainant and defendant concurred in establishing that on December 2, 1929, a "burro" track-layer was operating under its own power at a point in a curve on the main line of defendant, between Elkhorn station and Del Monte Junction; that defendant operates fourteen trains a day in both directions over this portion of its main line; that the point on the main line was more than one-half mile from any siding, witnesses fixing the point all the way from three-fourths of a mile to more than a mile; that extra freight train No. 2756 westbound was flagged and stopped because of the presence of the track-layer; that after the removal of the track-layer the train proceeded uninterruptedly to the Del Monte Junction. These facts were established by the testimony of R. P. Standley, conductor, and George Dyer, brakeman, of the freight train, and by F. E. Depew, Roadmaster, all employees of defendant.

The record shows that the Southern Pacific Company assigns but one man to operate this particular mechanism, known as a "burro" track-layer, and no train crew is assigned.

It was further established by the testimony of G. W. Colclough that on April 7, 1930, he saw the track-layer coupled to two standard freight flat cars at Monterey, and that it had moved the cars 500 or 600 feet, and that no person was on the train except the power-control operator. The movement was slightly down grade.

Defendant introduced twenty-one exhibits, all photographs, displaying the track-layer and its uses. This vehicle carries a crane for the purpose of transferring lengths of rail to and from the roadbed, which crane is transported usually on a flat car. It is powered by a 34 h.p. gasoline engine and is self-propelling. In addition, it is mechanically able to lift its rear wheels to permit skid-rails to be placed under it. There are four spools attached to the frame which revolve transversely, and permit derailment in order to clear the track. Both Mr. Guy and Mr. Depew testified that the vehicle can be removed thus in from two to four minutes. They further testified that besides the power operator, there are usually four or five laborers attached to the track-layer, who are trained in removing the car; that whenever the track-layer is on main line track, flagmen are sent in each direction to flag any approaching train, each flagman having written instructions from the foreman in charge of maintenance of way work, to be delivered to train engineers.

It was also established that while defendant has more than one "burro" track-layer, that none is operated with the so-called "full crew."

The tractive power of this track-layer is stated by Mr. Guy and Mr. Depew at 2500 pounds equivalent to the same poundage in draw-bar pull. Mr. Guy testified that the

crane in question does not possess sufficient tractive power to draw or propel one or more standard cars over the ordinary grades which obtain on the Southern Pacific lines, but that it could move a standard car a short distance down grade or on dead level track.

Section 3 of the Full Crew Law provides in part as follows:

"It shall be unlawful for any common carrier by railroad in the state of California operating more than four trains each way per day of twenty-four hours on any main track or branch line of railroad within this state, to run or permit to be run any self-propelled pile-driver, car or vehicle which has sufficient power to draw or propel itself and one or more standard cars, or any train propelled or drawn by steam, electricity or other motive power other than those trains described in sections 1 and 2 of this act that have not at least the following named employees thereon: * * * * * one motor or power control man for each train propelled by other motive power than steam or electricity and one steam engineer or one motor or power control man for each self-propelled pile-driver or other self-propelled vehicle which has sufficient power to draw or propel itself and one or more standard cars, one conductor and one brakeman; * * * * * provided, however, that the provisions of section three of this act with reference to self-propelled pile-driver, car or vehicle which has sufficient power to draw or propel itself and one or more standard cars shall apply to such self-propelled pile-driver, car or vehicle only when self-propelled pile-driver, car or vehicle is moved under its own power from one permanent station or permanent siding to place of work where the distance between said station or siding to place of work is one-half mile or more." (Amendment approved May 25, 1915, Stats. 1915, p. 832.)

We find as a fact that the "ourro" crane in question is a "self-propelled pile-driver, car or vehicle which has sufficient power to draw or propel itself and one or more standard cars" within the meaning of the language as used in the above quoted section, and that the defendant,

in the instance above outlined, violated the provisions of said Section 3 of the Full Crew Law.

Section 5 of the Full Crew Law provides that any violation of the Act shall be a misdemeanor and shall be punished by a fine not exceeding \$500.00, or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment. The statute is thus penal in nature.

Under Section 72 of the Public Utilities Act it is made the duty of this Commission to see that the provisions of the Constitution and statutes of this state affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected. Upon the request of the Commission it is made the duty of the district attorney of the proper county to aid in any enforcement and to institute and prosecute actions or proceedings for the enforcement of the provisions of the Constitution and statutes of this state affecting public utilities and for the punishment of all violations thereof. The Secretary of the Commission will be directed to send a copy of this Opinion and Order to the District Attorney of Monterey County, the county in which the instant violation occurred, with request that appropriate proceedings be instituted against defendant company, or its responsible officers under the provisions of the Full Crew Law.

ORDER

Complaint having been made to this Commission as entitled above, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises;

IT IS HEREBY FOUND AS A FACT that defendant on or about December 2, 1929, in the operation of its so-called "burro" track-layer, did violate the provisions of the Full Crew Law, all as more particularly set forth in the above Opinion, and

IT IS HEREBY ORDERED that the Secretary of this Commission forward to the District Attorney of Monterey County a certified copy of this Opinion and Order, together with request that appropriate proceedings be instituted against defendant, or its responsible officers, under the provisions of the Full Crew Law.

Dated at San Francisco, California, this 10th day of ^{September} ~~August~~, 1930.

W. J. ...

W. J. ...
W. J. ...
Commissioners

I do not believe that under the facts set forth in the record ~~that~~ there has been any violation of the "full crew" law by the defendant.
6. W. J. ...
Commissioners