

Decision No. 24445.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

---oOo---

HARRY SEE, the Brotherhood of Railroad
Trainmen, by Harry See, its State
Representative,

Complainant,

vs.

The Atchison, Topeka and Santa Fe
Railway Company,

Defendant.

Case No. 3137.

ORIGINAL

Harry See for Complainant.

G. E. Duffy for The Atchison, Topeka
and Santa Fe Railway Company, 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 from this Commission against defendant in accordance with the law and the facts concerning the operation of a freight train of more than forty-nine cars on its main line designated as the Valley Division, and between stations on that railroad designated as Hammond and Calwa, a distance of approximately five miles, with the train crew consisting of one conductor and two brakemen, in violation of Section 2 of the law known as "California Full Crew Law". (Statutes 1911, page 65)

Defendant in answer doubts if the enforcement of the Act or the imposition of any penalty for the violation thereof is within the jurisdiction of this Commission; but does not

deny the violation of the act charged in this complaint, but admits that there has been only a technical violation and that the same was wholly unintentional and unavoidable.

A public hearing was conducted by Examiner Johnson at Fresno on December 21, 1931.

The facts adduced from the testimony are not disputed. Witnesses for complainant and defendant concur in establishing that on October 2, 1931 the Atchison, Topeka and Santa Fe Railway Company ran its train known as Extra 1259 East, consisting of seventy-two cars and caboose between Hammond and Calwa, a distance of approximately five miles, with a train crew consisting of one conductor and two brakemen, whereas the act known as the California Full Crew Law, Section 2 thereof, required three brakemen upon such train. The fact was established that more than four trains each way per day of twenty-four hours are operated on the main track of the Santa Fe Company at this point; in fact that Time Table No. 65 of said company shows five passenger train schedules and one freight train schedule in each direction. The dispatcher at Fresno, knowing that an additional brakeman would be necessary for this crew before it reached Fresno instructed brakeman Joe Tully to report to conductor Zook for service on Extra 1259 East out of Riverbank prior to the train's departure out of Riverbank at 6:35 a.m. on October 2nd. When that train arrived at Denair station at 8:10 a.m. the conductor notified the chief train dispatcher at Fresno that brakeman Tully would be on duty sixteen hours at 1:00 p.m., and that he was of the opinion that this train would not reach Fresno by 1:00 p.m. and that he would be in need of the three brakemen after 1:00 p.m. The dispatcher advised the conductor to do the best he could. When the train was a short distance from Fresno the conductor received

a message from the chief dispatcher advising him to bring his train on to Fresno where the third brakeman would be furnished. This train passed Hammond, two miles north of Fresno, at 1:00 p.m. and when it passed through Fresno station a message from the chief train dispatcher was handed the conductor instructing him to take the train on to Calwa. No additional brakeman was furnished as promised by the dispatcher. These facts were established by the testimony of conductor J. A. Zook, and the testimony of C. G. Fluhr, Superintendent of the Valley Division of the Santa Fe, and F. J. McKie, Assistant General Manager.

Mr. McKie further testified as follows: "The law, however, was technically violated, which we have very freely and frankly admitted." There were introduced as exhibits two telegraphic messages from the chief train dispatcher, one instructing the conductor to proceed, that an extra brakeman would be furnished, and the second message at Fresno instructing him to go on to Calwa regardless of the absence of the third brakeman.

We therefore find as a fact that defendant on the 2nd day of October, 1931, did run a freight train of more than forty-nine cars, namely, seventy-two cars and caboose, on its main line designated as the Valley Division, and between stations on that railroad designated as Hammond and Calwa, a distance of approximately five miles, with a train crew consisting of one conductor and two brakemen, without complying with Section 2 of the Full Crew Law by having in charge thereof a train crew of one conductor and three brakemen.

As in Decision No. 22855 (35 C.R.C. 183), and in Decision No. 23090 (35 C.R.C. 430), against the Southern Pacific

Company, for violation of other provisions of the Full Crew Law, the Commission held that Section 5 of the Full Crew Law provides penal action, and that under Section 72 of the Public Utilities Act it is the duty of the Commission to see that constitutional and statutory provisions, enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and it was further pointed out that upon request of this Commission it is the duty of district attorneys to aid in enforcement, and to institute and prosecute actions for the punishment of violations, we must hold here that the record herein presents an analogous case, with only the difference of the particular section involved. Hence our conclusions and findings will be the same. The Secretary of the Commission will be directed to send a copy of this Opinion and Order to the District Attorney of Fresno County, in which county the violation occurred, with request that appropriate proceedings be instituted against said defendant company, or its responsible officers, under the provisions of the Full Crew Law.

C O R D E R

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

It is hereby found as a fact, that on October 2, 1931, in the operation of a freight train of seventy-two cars, defendant 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 the Railroad Commission forward to the District Attorney of Fresno County a certified copy of this Opinion and Order, together with a 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 1st day of February, 1932.

Albany
Leon Anthony
M. M. Carr
W. B. Lewis
Frederic G. Stevens
Commissioners.