

Decision No. 10858

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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Growers Packing and Warehousing
Association, Inc.
(a corporation),
Complainant.

vs.

Northwestern Pacific Railroad
Company, (a corporation),
Defendant.

ORIGINAL

Case No. 1732.

Sapiro & Levy and Boyd Oliver, for Complainant.

R. W. Palmer, for Defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding Growers Packing and Warehousing Association, Incorporated, a corporation, complainant herein, alleges that there is a street or roadway, known as Bosch Avenue, running in an easterly direction from the Town of Geyserville across the tracks of Northwestern Pacific Railroad Company, a corporation, defendant herein, at grade and leading thence to a packing house and warehouse of the complainant; that said Bosch Avenue leading to the packing house of the complainant has been in regular, continuous and uninterrupted use by the public for a period of more than twenty years next preceding the first day of March 1922 and that on or about the fourth day of March 1922 the defendant closed said Bosch Avenue and effectively stopped and cut off any and all possibility of ingress and egress to and from

said packing house of complainant across said railroad track by removing the earth from between the rails of said tracks and by excavating and removing the earth which formed the approaches to a grade crossing of said tracks and that by reason of the acts of defendant in closing said grade crossing complainant has been deprived of all means of ingress and egress to its property, except by a road which lies across private property over which complainant has no control and which road may be closed at any time at the option of said owners of said private property. Complainant asks that the Northwestern Pacific Railroad Company be required to reopen and maintain said grade crossing.

Defendant, in answer, denies that Bosch Avenue crosses the railroad tracks, right of way or station grounds of defendant, alleging that said Bosch Avenue ends at the westerly line of defendant's property in the Town of Geyserville. Defendant further denies that said street or roadway has been in regular, continuous or uninterrupted use by the public for a period of more than twenty years, or for any period of time, and denies that it has blocked or obstructed any public crossing or private crossing whatsoever.

Hearings on this matter were held before Examiner Satterwhite at Geyserville on May 5, 1922, and at San Francisco on June 21, 1922.

Considerable testimony was introduced to show that Bosch Avenue, sometimes known as Walden Avenue, is, and has been for many years, a public road extending at grade across the tracks of Northwestern Pacific Railroad Company.

It appears from this testimony that since 1867, there has been in more or less continuous use, a public roadway at approx-

imately the location of Bosch Avenue across the property now owned and occupied by the railroad, and the uninterrupted use of this roadway across the tracks of defendant since about 1900 was clearly established. Considering all the testimony on this question the Commission is convinced that there is in fact a public highway across the property and tracks of the defendant at this location.

In view of the fact that this is a public grade crossing of a highway over a railroad track it appears that under Section 43(b) of the Public Utilities Act the Commission has the exclusive power and it is its duty to prescribe the manner of operation, maintenance, use and protection of this crossing. From the evidence in this proceeding it appears that there is a considerable volume of vehicular traffic at certain seasons of the year over this crossing and that at these same seasons cars are frequently left standing on the yard tracks at Coyserville in such a manner as to seriously obstruct the view of approaching trains.

Under these circumstances one of two forms of relief should be provided; namely,- that cars should not be left standing on any track within a distance of 75 feet of this crossing, or if cars are left standing within 75 feet on this crossing that the crossing should be protected for such periods by a human flagman, and since this is a crossing of a public highway which is older than the railroad itself the burden of providing either of the forms of protection indicated should be upon the railroad. The prayer of complainant, therefore, should be granted and the crossing of the public roadway, sometimes known as Bosch Avenue, or Walden Avenue, should be adequately maintained and protected by the railroad.

ORDER

IT IS HEREBY FOUND AS A FACT, that there is a grade crossing of a public road over the track of Northwestern Pacific Railroad Company in the Town of Geyserville, unincorporated, in the County of Sonoma, State of California, at a location approximately 650 feet southeasterly from the intersection of Depot or River Street in said Town of Geyserville and the track of said Northwestern Pacific Railroad Company; therefore,

IT IS HEREBY ORDERED, that Northwestern Pacific Railroad Company maintain the grade crossing of the public highway sometimes known as Bosch Avenue, or Walden Avenue, across its track at a location approximately 650 feet southeasterly from the intersection of Depot or River Street and the track of Northwestern Pacific Railroad Company in the Town of Geyserville in a good and first class condition for the safe and convenient use of the public; said roadway across the tracks shall be maintained at an elevation equal to the top of rail of each track crossed for a width of not less than twenty (20) feet with grades between tracks, or approaching tracks, not exceeding two (2) per cent and shall be protected by a suitable crossing sign and shall in every way be made safe for the passage thereover of vehicles and other road traffic, and

IT IS HEREBY FURTHER ORDERED, that for the protection of said crossing Northwestern Pacific Railroad Company shall refrain from standing cars on any track within a distance of 75 feet from said crossing, or at its option in lieu thereof shall provide a human flagman for the protection of said crossing at such periods as cars are left standing on any track within a distance of 75 feet of said crossing.

The Commission hereby reserves the right to make such further orders relative to the location, construction, operation, maintenance, protection or abolition of said crossing as to it may

seem right and proper if in its judgment the public convenience and necessity demand such action.

Dated at San Francisco, California, this 11th day of August, 1922.

Josiah Martin
Charles J. ...
W. J. ...

Commissioners.