

Decision No. 1511

JOHN WALL, JESSE PARMAN, S. W. MEHNER,  
J. B. ESTES AND IRA S. CANNON, CONSTI-  
TUTING THE BOARD OF SUPERVISORS OF THE  
COUNTY OF MODOC, STATE OF CALIFORNIA,

Complainants,

vs.

Case No. 536

NEVADA-CALIFORNIA-OREGON RAILWAY,  
a corporation,

Defendant.

Cornish and Robnett, for Complainants.

James Glynn, for Defendant.

ESHEWMAN, Commissioner.

O P I N I O N

The complainants in this case constitute the Board of Supervisors of the County of Modoc and in general the complaint may be said to attack as excessive and unreasonable all of the freight and passenger rates of the Nevada-California-Oregon Railway. It is also alleged that the depot and station facilities of the defendant corporation in the City of Alturas are not located so as to serve the public adequately, being located at a point about one mile distant from the center of the town.

Accompanying the complaint were petitions signed by hundreds of citizens praying that this Commission investigate on its own motion the reasonableness of the rates, both freight and passenger, of the Nevada-California-Oregon Railway. The Commission, therefore, issued an order calling for an investigation on its own motion of the rates of the Nevada-California-Oregon Railway (Case 560) which has been set for hearing at Alturas August 18, 1914.

I will therefore confine myself in this opinion to that portion of the complaint dealing with the location of the present depot facilities of the defendant railway. The Nevada-California-Oregon Railway runs in a general northerly direction from Reno, Nevada, to Lakeview, Oregon, and during the year 1909 was constructed north from the town of Likely to Alturas. The testimony shows that before the road was constructed into Alturas information was given out that it was the intention of the railroad officials to build the line so that it would be located about five miles east of the town proper, which caused a great deal of apprehension among the citizens of that community who proceeded to organize a committee for the purpose of inducing the railroad to alter its line so as to pass through Alturas.

It was testified that a free right-of-way sixty feet in width through the town was secured and donated to the railway company; that in addition thereto citizens acting through committees purchased from one Fitzgerald eighty acres of land at \$35.00 per acre, forty acres from one Thomas for a lump sum of \$800.00, and forty acres from one A. B. Estes for a lump sum of \$1200.00. This land, the witness asserted, was deeded to T. F. Dunaway, Vice President and General Manager of the Nevada-California-Oregon Railway. Witness further recited that this land was deeded to Mr. Dunaway personally at the suggestion and request of Chief Engineer Oliver of the Railway Company. One witness stated that he had understood that about one hundred acres of the Adams Tract was also donated as a bonus to the railroad. At all events, the property purchased from Fitzgerald, Thomas and Estes as an inducement to have the railroad enter the town of Alturas and locate its depot at or close to a point where the present line of railway crosses Main Street was not deeded to the Railway Company but to one of its officials who, according to the testimony, transferred the property to the Alturas Heights Company, which latter company proceeded to subdivide and sell the same.

From the testimony it would appear that if the lands in question were intended as an inducement or an encouragement to the railroad to build its line into the town of Alturas the lands thus donated did not reach the railroad but went to its officials for their private gain. Our Supreme Court has condemned such practices, and in the case of McCowen vs. Pew, 153 Cal., 736, and particularly at page 743, Mr. Justice Lorigan in discussing the question of contracts entered into between individuals and officers or agents of railroad corporations to secure the location of a line, says:

\*\*\*\*\*Such contracts are uniformly held to be void. They constitute a species of bribery of the officers of the company and are necessarily corrupt in their tendencies as influencing the officers of the corporation for mercenary considerations and for their private emolument to forego the duties they owe to public interests to locate such public conveniences where public necessities require that they should be established".

Further, on page 751, Justice Lorigan says:

\*\*\*\*\*It will be observed further, that in all the cases reviewed, the contracts in question were declared invalid because agents or officers of the companies had taken advantage of their position to further their private interests and secure personal emoluments to the disadvantage of the companies they represented. The contracts were not declared invalid because they related to the location of depots or stations (speaking now of the special matters involved in the contracts in those cases) at particular localities, but because the persons who made them had been guilty of fraud and corrupt conduct toward their principals -- the corporations\*\*\*\*\*."

"In Woodstock Iron Co. vs. Extension Co., 129 U.S., 643, (9 Sup.Ct.402), a railroad company contracted with another company of like nature to construct a railroad by the nearest and cheapest route from Atlanta to Columbus for a consideration of twenty thousand dollars a mile. One of the directors of the extension company and also a director in the railroad company negotiated on behalf of the extension company a contract with an iron company to deflect the road at a certain point lengthening it about five miles, for which the iron company agreed to give right of way through its property and convey certain tracts of land and pay certain sums of money. The railroad company had no knowledge of the contract, and the court held the contract void as immoral in its conception and corrupting in its tendency; that it was nothing less than a bribe offered to the employee to disregard his contract with his employer".

The above is quoted not for the reason that the railroad should not have been located as it has been but from the fact that it was stated by the attorney for defendant that the line of railroad as originally laid would have been about five miles to the east of Alturas and that the railroad by making the wide detour to reach Alturas had constructed five miles of railroad at great expense which was unnecessary. If, therefore, the railroad did actually construct the five miles additional railroad in order to reach Alturas and as an inducement to the railway company the citizens raised money and purchased a considerable acreage of land as a bonus, this land should have gone to the railway company and not to its officials in their individual capacities.

Witness testified that the deeds conveying this property to Mr. Dunaway were placed in escrow in a bank in Alturas to be delivered when the depot site satisfactory to the citizens committee was agreed upon and that the chief engineer of the railway company by misrepresenting where the depot was to be located obtained possession of the deeds and had the same recorded.

In constructing its line through the town of Alturas the defendant passed within approximately 1500 feet of the business center of the town and continued in a northwesterly direction, placing its depot at a point about 5000 feet or nearly one mile from the center of the business section on land deeded to an officer of the railroad.

I believe it clear that the depot of the defendant was not located in Alturas with the idea of adequately serving that community but in the hope that it would enhance the value of real estate contributed by the citizens and deeded to an officer of the railroad.

It is unnecessary, however, to go into further details of this kind or to review the evidence given concerning these land donations. The question before the Commission is, whether or not the present depot of the defendant adequately serves the town of Alturas. The complainants urge that the depot should be located at

a point where Modoc Street crosses the line of the defendant, which would be approximately 1500 feet from the business center of the town. The defendant in replying to this states that the land in the vicinity of the crossing before mentioned is low and frequently overflowed when the Pitt River runs out of its banks.

There was considerable conflict in the testimony as to the actual conditions prevailing in this section during high water on the Pitt River but it was testified to that the tracks of the defendant were never submerged. At the point where Modoc Street crosses the railroad the tracks are on a fill and if, as a fact, the tracks are not submerged during the rainy season it would only require a fill the same height as the railroad grade to accommodate a depot and place it above any high water. The testimony shows that because of the bad condition of the highways in winter time vehicles of various kinds became mired down between the present depot and the town, but, as stated by counsel for defendant, the railroad cannot be blamed for this state of affairs and the responsibility for poor roads rests with the town or county authorities.

As before stated, the distance from the center of town by the shortest highway to the depot of the defendant is about 5000 feet, or nearly one mile, and it is idle to say that a depot located at this distance from the center of town serves the public as adequately and conveniently as would a depot located at the foot of Modoc Street approximately 1500 feet from the center of town. Approximately 8,500 passengers arrived and departed from Alturas on trains of the defendant from July 1, 1912, to June 30, 1913, and from the fact that there are very few houses located in the vicinity of the depot I am convinced that the great majority, if not practically all, of these passengers were required to travel a distance of almost a mile to or from the depot of the defendant, whereas if the station were located at the foot of Modoc Street this distance would be reduced to approximately 1500 feet.

There are no extraordinary obstacles in the way of constructing a passenger depot at a point where Modoc Street crosses the tracks

of the defendant but I do not consider that the right of way is wide enough to lay out any extensive freight yards, which would require the purchase of considerable additional property and a large amount of filling to afford reasonable freight facilities. It is incomprehensible to me why the defendant did not place its entire station facilities at Alturas at the point where its line crosses Main Street, which appears to have been the place selected by the depot committee when securing land to be donated to this railroad, but having placed its depot facilities as it has - about a mile from the center of town - and having invested a considerable amount of money in buildings I do not believe the defendant should be required to move its freight station from its present location, first,-- because the most available place seems to be where the railroad crosses Main Street, which would not be of enough advantage to people of Alturas to justify the expenditure necessary and, second,-- because at the foot of Modoc Street would require such a large outlay that I do not believe it justified.

I believe it clear that a railroad has the right, generally speaking, to determine the location of its depots but this right cannot be exercised arbitrarily and the selection of depot sites must be made with regard to the convenience and necessities of the public. (C. & E. I. R. R. vs. People, 222 Illinois, 396).

In the case of McCowen vs. Pew, supra, the court specifically states that as public agents it is the duty of the carriers to locate their depots and stations where public wants and necessities demand their establishment and to change them and provide others as future public necessities may require.

It is needless to cite all the authorities to sustain the position that a carrier may be required when public necessity and convenience demand to provide additional station facilities or to move existing stations to points where the public will be more adequately and conveniently served.

Witness for the defendant after testifying as to the transfer of the real estate before mentioned as a bonus to the railroad admitted that, in his judgment, the present depot did not adequately

serve the town of Alturas.

It is impossible to avoid the conclusion that the officers of this company designedly placed the depot facilities of the company at the inconvenient spot where such depot facilities are now maintained, for the sole purpose of causing the town to grow in that direction, and thereby enhance the value of the property owned by the officers of this company. If the company were the offender and not the officers of the company, it would be entirely just that any investment made with such motives at the present location of the depot of this defendant in Alturas, should not be considered in this proceeding. Unfortunately, however, the treasury of the company furnished the money to build these facilities while the pockets of the officers of the company received the funds from the sale of the lands.

The present facilities may be used for a freight depot, and the testimony shows that at times these facilities are severely taxed and no great loss will be occasioned to this company because one of its clerks may be sent to the new depot before the arrival and departure of trains for the purpose of selling tickets and checking baggage, and no financial injury will be done this company and no additional expenditures required other than the comparatively small amount necessary to build a frame depot at the point indicated.

I recommend the following order:

O R D E R

The Board of Supervisors of the County of Modoc, John Wall and others, having filed with this Commission a complaint against the Nevada-California-Oregon Railway charging that the depot facilities of said Nevada-California-Oregon Railway at the town of Alturas in the county of Modoc are inconvenient and unreasonable as to passenger traffic moving over the de-

defendant's main line to Alturas and that a convenient and reasonable site would be at the intersection of Nevada-California-Oregon Railway Company's main line with Modoc street in the town of Alturas; and a hearing having been held and being fully apprised in the premises, the Commission hereby finds as a fact that the site of the present depot of the Nevada-California-Oregon Railway Company is inconvenient and unreasonable as to passenger traffic moving over the defendant's main line to Alturas, and that a convenient and reasonable site would be on the west side of the line of said defendant at the intersection of Modoc street and said line of said defendant;

And the Commission further finds as a fact that public convenience and necessity will be served by the construction of a depot at a point named above, and by the stopping of all the trains of the defendant carrying passengers at this point, and provision for selling tickets and checking baggage at said station; and basing this order on the foregoing findings of fact and the further findings of fact in the opinion hereto;

IT IS HEREBY ORDERED:

(1) Defendant shall within thirty (30) days from date, present to the Railroad Commission for its approval, plans for a passenger depot to be built on the north side of Modoc street and on the west side of the line of said defendant at the intersection of Modoc street with said line, and shall within ninety (90) days from the approval of said plans by this Commission, build on said location a frame passenger depot of such type as shall be approved by this Commission.

(2) Defendant shall within ten (10) days after the date of this order, stop all of its trains carrying passengers at the site upon which it is herein directed to build a depot, that is, at the intersection of Modoc street and the line of



said Nevada-California-Oregon Railway.

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

Dated at San Francisco, California, this 16<sup>th</sup> day of May, 1914.

John McCallister

Alex Gordon

Max Thelen

Edwin O. Edgerton

Commissioners.