

ORIGINAL

Decision No. 1526

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

OAKLAND, ANTIOCH and EASTERN
RAILWAY,

Plaintiff,

vs.

NORTHERN ELECTRIC RAILWAY
COMPANY,

Defendant.

Case No. 527.

Jesse H. Steinhart and Corbet & Selby for complainant.
T. T. C. Gregory and C. J. Goodell for defendant.

THELEN, Commissioner.

O P I N I O N.

The only real issue in this proceeding is the question of which of the two railway companies affected shall bear the expense of the installation of a proper crossing between the line operated by the Oakland, Antioch and Eastern Railway and a spur track or wharf track belonging to the Northern Electric Railway Company at a point immediately west of the west end of the so-called M Street bridge across the Sacramento river, connecting Sacramento county and Yolo county.

It appears that a spur track was constructed by the predecessors in interest of the Northern Electric Railway Company for the purpose of connecting their line of railway in Yolo county with their proposed wharves to be located on the west bank of the Sacramento river, and that the spur track was constructed prior to the line of railway now operated by the Oakland, Antioch and Eastern Railway. It also appears that the latter line was constructed by the Vallejo and Northern Railroad Company, one of the predecessors of the Northern Electric Railway Company, under a contract by which the Vallejo and Northern Railroad Company was to be reimbursed for such construction by the Oakland, Antioch and Eastern Railway. The latter company claims that the Northern Electric people and their predecessors sought

to secure an advantage over the Oakland, Antioch and Eastern by constructing the spur track prior to the construction of the main line now operated by the Oakland, Antioch and Eastern, for the purpose of placing the latter company in the position of a "crossing" railroad, so that it would become the duty of the Oakland, Antioch and Eastern to pay the expense of the crossing at this point.

It appeared at the hearing that only a short while ago certain cars of the Oakland, Antioch and Eastern were derailed at this crossing. Both parties agree that the crossing, which is a so-called "jump" crossing, is unsafe, and that a safe, permanent crossing should be installed. Although fourteen passenger trains and two freight trains are operated by the Oakland, Antioch and Eastern daily over this crossing, and although the safety of its passengers and employees has been threatened by the unsatisfactory character of the crossing, and although the crossing has also been used by the Northern Electric, these two railway companies have permitted the matter to remain in statu quo, and have failed to put in a safe crossing simply because they have been fighting over the question of who should bear the expense, the total amount of which will not be over \$500 or \$600. It seems unfortunate that the safety of the traveling public and of the railway employees should be menaced by any such petty contentions between these companies.

All parties agreed at the hearing that a standard 3-rail crossing should be constructed and that the crossing will be sufficiently protected from the tower which stands near the west end of the M Street bridge.

The Northern Electric's representatives stated that while they had been willing to share the expense of the crossing half and half with the Oakland, Antioch and Eastern Railway, they had stood on what they believed to be their legal rights as the "crossed" road, for the reason that the Oakland, Antioch and Eastern claimed that the crossing should be constructed without any expense to that company. As the facts show that the Northern Electric Company's spur track or

wharf track was first constructed, regardless of the motive for such construction, the Oakland, Antioch and Eastern is technically in the position of the "crossing" railroad. While it might well be that this company could be compelled to bear the entire expense of the installation of a permanent crossing, there are some equities on the other side. The Northern Electric originally offered to bear one half of the cost of constructing the crossing and the Oakland, Antioch and Eastern should have accepted this offer.

I find on the facts of this case that it would be fair to provide that the Northern Electric should bear one fourth of the cost of the crossing and that the Oakland, Antioch and Eastern should bear three fourths of such cost. It must be clearly understood that this solution is one which seems fair and equitable on the facts of this case, and that it is not to be taken as establishing a usual and permanent rule with reference to the incidence of the expense of railroad crossings as between the "crossing" railroad and the "crossed" railroad.

I submit herewith the following form of order:

O R D E R.

A public hearing having been held in the above entitled proceeding, and the matter having been submitted and being now ready for decision,

IT IS HEREBY ORDERED that the parties to this proceeding be and they are hereby ordered to install within two months from the date of this order, a standard three-rail crossing at the point at which the rails now operated by the Oakland, Antioch and Eastern Railway cross the so-called spur track or wharf track of the Northern Electric Railway Company immediately west of the west end of the Sacramento M Street bridge, and that the expense of said crossing be

shared one fourth by the Northern Electric Railway Company and three fourths by the Oakland, Antioch and Eastern Railway.

The parties will be expected to agree among themselves as to which one shall install the crossing, and it is to be hoped that they will henceforth bear in mind that they should not permit their petty squabbles to interfere with the safety of the passengers and employees riding on their respective trains.

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

Dated at San Francisco, California, this 18th day of May, 1914.

John W. Eschleman
H. J. Loveland
W. J. Gordon
Max Thelen
Edwin C. Edgerly
Commissioners.