

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Decision No. 1548

ORIGINAL

OAKLAND, ANTIOCH AND EASTERN RAILWAY,

Complainant,

vs.

NORTHERN ELECTRIC RAILWAY COMPANY,

Defendant.

Case No. 514.

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

THEBLEN, Commissioner.

O P I N I O N

The complaint in this case alleges, in part, that complainant, hereinafter referred to as the Oakland, Antioch and Eastern, is the owner and in the possession of a certain railroad and railroad tracks in Yolo county, upon a parcel of land which is specifically described; that complainant is the owner and in the possession of said railroad and railroad tracks, under a certain agreement between that company and Vallejo and Northern Railroad Company, dated January 2, 1913; that by said agreement the Vallejo and Northern Railroad Company transferred to the Oakland, Antioch and Eastern the exclusive possession and ownership of said tracks and railroads and the right exclusively to operate and exclusively to possess the same, in consideration whereof the Oakland, Antioch and Eastern paid to the Vallejo and Northern the sum of \$58,307.00, and in addition thereto, the cost of constructing said tracks and appurtenances; that the defendant, hereinafter referred to as the Northern Electric, claims as assignee of the Vallejo and Northern Railroad Company to own and possess the right to use and that said company is actually using a part of said railroad and tracks jointly with the Oakland, Antioch and Eastern; that the rights and

property transferred by the Vallejo and Northern Railroad Company were not necessary and useful to said company and that they are not now necessary or useful to the Northern Electric. In its prayer the complainant asks this Commission to make an order directed to The Northern Electric to show cause by what right the latter company is operating its cars over said tracks, and that this Commission direct the Northern Electric to discontinue the use of said tracks and that this Commission construe and hold that the agreement hereinbefore referred to is not an agreement for joint use and refuse to permit such joint use.

The answer denies that Oakland, Antioch and Eastern is the owner of said railroad and railroad tracks or is entitled to the exclusive possession thereof, and alleges that the Northern Electric is the owner thereof and that said company is entitled to the joint possession of said railroad and tracks with the Oakland, Antioch and Eastern. The answer also alleges that on November 13, 1913, the Northern Electric commenced an action in the Superior Court of this State, in Yolo county, against the Oakland, Antioch and Eastern, referring to these same tracks and asking that a preliminary injunction issue to enjoin the Oakland, Antioch and Eastern from interfering with the Northern Electric in the use of a certain switch located in the railroad to which the Oakland, Antioch and Eastern refers in this proceeding, and that on November 13, 1913, a restraining order was issued by the Superior Court against the Oakland, Antioch and Eastern. The evidence shows that prior to the submission of the present proceeding, the Superior Court of Yolo county issued its writ of injunction, pendente lite, as prayed for in the complaint of the Northern Electric. The answer also alleges that the complaint in this proceeding states a cause of action arising out of a contract and that this Commission is simply being called upon to give a judicial interpretation and construction of the contract and that it has no jurisdiction to give this relief.

The hearing in this case was held in San Francisco on May 7,

1914. Time was granted for the filing of briefs, which briefs have now come in, so that the case is ready for decision.

In so far as defendant's contention rests on the fact/ that solely this proceeding involves the construction and interpretation of a contract or that the cause of action alleged in the complaint arises out of a contract, I can not agree with defendant. This Commission will frequently be called upon to construe contracts and to enforce rights which grow out of contracts. For instance, a complainant may demand that a water utility supply him with water, and in support of his claim he may present what he claims to be a contract with such utility entitling him to service. In such event, it may become necessary for this Commission to construe and interpret the alleged contract in order to ascertain whether the utility has held itself out as serving the complainant, and this Commission may be called upon, in such event, to compel the utility to live up to the obligation which it may have taken upon itself by reason of such contract. In such case, however, and similar cases, the Commission acts because it has jurisdiction over the relationship between the utility and its patrons, present and prospective, and the interpretation is merely incidental to the award of the relief.

In the present proceeding, there is no allegation in the complaint that the safety of the traveling public or of the employees of these two railroads is in any way being hazarded or that either of the utilities is failing to give adequate service to any of its customers. The Commission is not asked to give relief under any of the heads specified in the Public Utilities Act.

The primary object of the complaint seems to be to secure from this Commission an interpretation and construction of the contract or agreement between the two railroad companies--a matter in which this Commission is not authorized to exercise jurisdiction, except in so far as may be incidentally necessary in connection with some established power or duty of this Commission. As the complainant has failed to bring itself within any such power or duty of this Commission, the complaint must be dismissed.

I submit herewith the following form of order:

O R D E R:

The above entitled case having been submitted, and being now ready for decision, and the Commission finding that it does not have jurisdiction to grant the relief for which the complainant asks,

IT IS HEREBY ORDERED that said complaint be and the same is hereby dismissed.

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 28th day of May, 1914.

H. D. Loveland

W. H. Thelen

Edwin O. Edgerton

Commissioners.