

Decision No. ✓

ORIGINAL

Decision No. 1757

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

City of Long Beach, a municipal corporation,

Complainant,

vs.

Southern Pacific Company et al,

Defendant.

Application No. 1063

Frank Karr for Pacific Electric Railway Company  
D. H. McDonald for San Pedro Lumber Company  
W. I. Gilbert for Southern Pacific Company  
George F. Kapp for the City of Long Beach  
E. F. Hahn for the Long Beach Milling Company.

EDGERTON, Commissioner.

O P I N I O N

The substance of this complaint is that the Southern Pacific Company maintains and operates a spur track extending from the west side of Alamitos Avenue, in Long Beach, California, eastward to, or near to, Cerritos Avenue, a distance of about three blocks, and to the place of business of the Long Beach Milling Company. We are asked to order the railroad company to remove said spur track.

The Southern Pacific Company filed an answer and the Long Beach Milling Company and others now being served by this spur track appeared and protested against the granting of the city's application.

Evidence was introduced by the city in an attempt to establish that this spur track was not needed for the service of the Long Beach Milling Company or any other persons or corporations, and further, that it was an ugly, inconvenient and un-

necessary incumbrance in what is properly a residence portion of the city. On the other hand, the milling company and the railroad introduced evidence for the purpose of showing that this spur was needed and useful to the railroad and the milling company, and that it was situated in a business portion of the city.

It seems that the city of Long Beach prior to the instituting of this action before the Commission ordered the railroad company to remove this track, which order was met by the declaration on the part of the railroad company that it could not remove this track without the consent of the Railroad Commission, whereupon the city filed this action.

The only power of this Commission in the premises is that which is found under General Order No. 36, paragraph 2 of which reads as follows:

"It is further ordered that no railroad corporation shall move or abandon any depot or station building, or abandon an agency at any depot, or take up or discontinue the use of any siding, spur, or other track upon which passengers or freight have been received or discharged, without first having made application to and received the consent of this Commission; provided, however, that this section shall not apply to temporary tracks, nor to the extension or alteration of tracks which shall continue to serve the purposes for which they were constructed, nor to tracks which have been constructed under special contracts, wherein time limits or other conditions affecting their permanency are specified."

Hence, the only action possible by the Commission is to give or refuse its assent to the taking up or discontinuance of the use of this spur.

I believe that this Commission should interfere as little as possible with the functions of a city in determining whether or not any portion of its area should be established as a residence or business district, and therefore, no general order of this Commission should be allowed to stand in the way of the exercise of the city's power to determine for itself whether any given business should be operated within its limits or the location for the opera-

tion of such business.

On the other hand, it is the undoubted function of this Commission to see that no shipper is unjustly injured by the withdrawal from him of transportation facilities such as those furnished by spur tracks, etc. In this case it developed at the hearing that the main purpose of the city in this proceeding was to bring about the removal of such business as is now being conducted by this milling company from this particular portion of the city. I believe this Commission should take such action as will not interfere with the exercise of the city's powers and which at the same time will safeguard the interests of the shipper and the railroad company.

I therefore recommend that an order be made authorizing the railroad company to discontinue the use of this spur and to remove the same when the city shall have established its right to remove either said spur track or the business establishments now being served thereby, and further, that said city shall have exercised such right.

I submit herewith the following form of order:

O R D E R

Application and complaint having been made herein by the City of Long Beach against the Southern Pacific Company, et al., wherein the maintenance and operation of a certain spur track in the City of Long Beach is complained against, and a public hearing having been had and the Commission being fully apprised in the premises,

IT IS HEREBY ORDERED by the Railroad Commission of the State of California that permission is hereby given to Southern Pacific Company and Southern Pacific Railroad Company to discontinue the use of and to take up that certain spur or siding or track, extending from the west side of Alamitos Avenue, in Long Beach,

California, eastward to, or near to Cerritos Avenue, a distance of about three blocks, and to the place of business of the Long Beach Milling Company, said tracks extending along and over Blocks 98 and 99 of the Alamitos Beach Townsite in said City of Long Beach and across Bonito Avenue, a public street of said city. Provided, that this permission shall only become effective when the City of Long Beach shall have established and exercised its right to remove or cause to be removed said spur or track or the business establishments now being served thereby.

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 28<sup>th</sup> day of August, 1914.

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*Alex Gordon*

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*Max Heber*

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*Edwin O. Edgerton*

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Commissioners.