

Decision No. 2125

ORIGINAL

In the matter of the application of)
CITY OF OAKLAND, a municipal corpora-)
tion, for permission to construct)
Nineteenth Avenue at grade across)
the track of Western Pacific Railway)
Company, a corporation, between East)
Twelfth Street and the United States)
Bulk Head Line, in the City of Oak-)
land, Alameda County, California.)
.....)

Application No. 1465.

In the matter of the application of)
CITY OF OAKLAND, a municipal corpora-)
tion, for permission to construct)
Nineteenth Avenue at grade across the)
tracks of Central Pacific Railway Com-)
pany, a corporation, and its lessee,)
Southern Pacific Company, a corpora-)
tion, between East Twelfth Street and)
the United States Bulk Head Line, in)
the City of Oakland, Alameda County,)
California.)
.....)

Application No. 1466.

John J. Earl, for Applicant.

Geo. D. Squires, for Southern Pacific Company.

Allan P. Matthew, for Western Pacific Railway Company.

John A. O'Donnell, for Henry Root, Protestant.

DEVLEN, Commissioner,

OPINION.

These two applications were filed at the same time by the City of Oakland and look to opening the same street (Nineteenth Avenue); one of them covering the crossing of the track of the Western Pacific Railway Company and the other the crossing of the tracks of the Southern Pacific Company, as lessee of the Central Pacific Railway Company. They were heard together at the same public hearing in San Francisco, and the same questions being involved in both, will be considered together in this opinion and jointly covered in the order.

There are three matters to be considered in connection with these grade crossings; First, the necessity for the crossings; Second, the need for their protection; Third, the division of expense of this

protection, if the applications are granted, and the need for such protection is shown.

The tracks of the railroad companies run in this vicinity in a general easterly and westerly direction. South of the tracks lies a large tract of land owned in part by the City of Oakland and in part by private owners, which is now and will probably always be devoted to industrial purposes. At the present time the Livingston pier, a city wharf, and several industries are located south of the tracks and east of the proposed extension of Nineteenth Avenue, and undoubtedly the number will be increased in the near future. These industries and the municipal wharf are now accessible only by the way of Twenty-second Avenue or Twenty-third Avenue. To reach the wharf and some of the industries from the business section of Oakland it is necessary for vehicles to make a long detour, of from a mile to a mile and a half, over very poor streets, and the testimony showed that all of the industries except possibly those located directly upon Twenty-second or Twenty-third Avenues would find the construction of these crossings and the opening of Nineteenth Avenue an added convenience. Several witnesses connected with industries located either on, or in the vicinity of, the property owned by the City of Oakland in this locality testified that they considered the need urgent and one of them testified that his present inconvenience was so great he would not have located his plant in this tract of land if he had not understood that this street would be opened. The protestant against the granting of these applications, and his witness, stated that they believed the opening of this street would serve public convenience, and there is no doubt in my mind but that this street should be opened if it can be shown that no undue hazard would be caused by reason of the construction of the crossings applied for.

The evidence shows that on the northwest corner of the intersection of the tracks with this proposed street a building obscures

the view of trains approaching from the west and on the opposite side of the track a high board fence at the southwest corner forms an obstruction to the view of eastbound Southern Pacific trains to drivers of vehicles going north. It also appears that on the opposite side of the street on the same side of the tracks the southerly track of the 6 Southern Pacific tracks has at times box cars standing upon it which to a certain extent obscure the view to be had of trains approaching from the east.

The removal of the fence is a matter which is controlled by the City of Oakland and the Attorney for the Southern Pacific stated that if this street was open the rules of his Company would not permit cars to be placed to obstruct the view. I am of the opinion that with the removal of this board fence for a reasonable distance west of the proposed street and the abandonment by the Southern Pacific of a portion of the southerly track for storage, that this crossing would not be particularly unsafe, when protected, even with the passage thereover of the 150 to 200 trains which use it daily. The testimony, with the exception of that of the protestant, was unanimous to the effect that this crossing could be properly safe guarded without the installation of crossing gates, this being a type of protection which costs considerably more for both installation and maintenance than an automatic flagman. The Attorney for the Southern Pacific stated that the operating department of his railroad did not think that it would be necessary at this time to install crossing gates and maintain a watchman there to operate them, and this is also the opinion of our own engineering department.

I believe that until traffic becomes much heavier than it will be for some time after this street is opened, an automatic flagman, connected with the rails of both railroad companies, will provide sufficient protection at the tracks for those who will use the crossing.

In this connection I wish to call the attention of the Southern Pacific Company to the fact that several witnesses testified

that the crossing of Twenty-second Avenue and the Southern Pacific Company's tracks was an exceedingly dangerous crossing, and to recommend that it investigate thoroughly the conditions obtaining at this crossing and provide such protection as is necessary to safeguard the lives and property of those who use it.

In regard to the division of expense for the protection of these crossings. The easements which both railroad companies have executed, granting to the City of Oakland portions of their respective rights-of-way, contain the following clause:

"In the event that lawful authority shall require the installation and maintenance of gates at said crossing, the party of the second part (City of Oakland) shall pay one-third of the cost of installing the same, said one-third, however, not to exceed the sum of \$ 400.00."

These easements have been accepted by the City and while this clause in the indenture looks to the installation of crossing gates and apparently expects that gates will be installed independently on both railroads I see no reason why, if at the present time gates are not considered necessary, the City should not pay the same proportion of the cost of the automatic flagman protection that it has indicated it is willing to pay for the gates.

I submit the following form of order:

ORDER

CITY OF OAKLAND, a municipal corporation, having applied to the Commission for permission to construct Nineteenth Avenue at grade across the track of Western Pacific Railway Company, a corporation, and Central Pacific Railway Company, a corporation, and its lessee, Southern Pacific Company, a corporation, between East Twelfth Street and the United States Bulk Head Line, in the City of Oakland, Alameda County, California, and a public hearing having been held, and the Commission being fully apprised in the premises, as set forth in the foregoing opinion,

IT IS HEREBY ORDERED, That the City of Oakland be and the same is

hereby granted permission to construct Nineteenth Avenue at grade across the tracks of Western Pacific Railway Company, and Central Pacific Railway Company, and its lessee, Southern Pacific Company, between East Twelfth Street and the United States Bulk Head Line, in the City of Oakland, Alameda County, California, subject to the following conditions and not otherwise, viz.:-

(1) These crossings shall be constructed of a width of not less than forty (40) feet, with grades of approach not exceeding six (6) per cent, and shall in every way be made safe for the passage thereover of vehicles and other road traffic.

(2) The entire expense of constructing the crossings shall be borne by applicant.

(3) The expense of maintaining the crossings hereafter shall be borne by applicant up to within two (2) feet of the outside rails of Western Pacific Railway Company and the outside rails of Southern Pacific Company. The expense of maintaining the crossings between the rails of Southern Pacific Company and to a point two (2) feet outside of the outside rails thereof shall be borne by Southern Pacific Company. The expense of maintaining the crossing between the rails of Western Pacific Railway Company and to a point two (2) feet outside thereof shall be borne by Western Pacific Railway Company.

(4) For the protection of these crossings Western Pacific Railway Company and Southern Pacific Company shall install, in a conspicuous place, one (1) first-class, automatic flagman, of a type approved by the Commission.

(5) The expense of providing and installing said crossing watchman shall be borne, one-third (1/3) by the applicant, one-third (1/3) by Western Pacific Railway Company and one-third (1/3) by Southern Pacific Company.

(6) The cost of maintaining this watchman hereafter shall be borne jointly by Western Pacific Railway Company and Southern Pacific Company.

(7) City of Oakland shall at its own expense remove, or cause to be removed, the board fence along the south right-of-way line of Southern Pacific Company, between the property of the City and Southern Pacific Company, for a distance of not less than two hundred (200) feet from the west line of Nineteenth Avenue.

(8) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of these crossings as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

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 4th day of February, 1915.

Max J. Heley

W. Gordon

Edwin O. Edgerton

Frank R. Decker

Commissioners.