Decision No. ✓.

Decision No. 2263

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

In the matter of the application of CITY AND COUNTY OF SAN FRANCISCO for permission to construct its double track street railway at grade across the tracks of Southern Pacific Company, at Potrero Avenue and Division Street, in the City and County of San Francisco, California.

Application No. 1170.

Robert W. Searls, for City and County of San Francisco

E. J. Foulds, for Southern Pacific Company.

GORDON, Commissioner,

O P I N I O N

This application was filed with the Commission on June 6, 1914, and was accompanied by a letter from the Southern Pacific Company to the effect that no objection would be made to the granting of this application provided the City would in due course enter into a formal agreement substantially in accordance with the terms of a tentative agreement which was attached to the letter. Acting upon this letter and the representation of the city officials that the lack of the crossings was costing them considerable money every day, the Commission informally granted permission for the crossings to be made, and it was the intention to enter an ex parte order to cover the application at such time as a final agreement between the two companies was filed. The Commission was later advised by the City that it was unable to agree with the Southern Pacific Company regarding certain conditions in the agreement to be made between them, and a public hearing was subsequently held in San Francisco.

The City and County of San Francisco by charter is empowered to construct and operate street railway lines, and acting upon this provision of the charter under the name of the Municipal Railway it wished to construct its double track line across the two main lines and an industrial siding of the Southern Pacific at Division and Potrero Streets, and this application covered these desired

crossings.

At the hearing it was stated that the only matters in which the Southern Pacific Company and the officials of the Municipal Railway, on behalf of the City and County of San Francisco, failed to agree was in regard to two provisions, namely: determining the division of expense regarding the maintenance and renewal of the crossingsand the crossing frogs which had previously been installed at the expense of the city; and the terms upon which an interlocking plant should be constructed if at some future date it became necessary or was ordered by the municipal or other lawful authority. It was stated by representatives of both parties that an interlocking plant was not now needed for the protection of these crossings and this was confirmed by the report of our own engineering department which had made an investigation upon the ground. Since this particular matter then, was not likely to become of importance for some time in the future it was stipulated by both parties that the contract which should be executed by them would omit all reference to an interlocking plant, hence the matter to be determined in regard to this application is merely that of the division of the maintenance expense of the crossingsand crossing frogs.

The Southern Pacific Company, for its two main tracks, has a franchise from the City permitting them to cross the street in question, Potrero Avenue. The industrial spur, however, exists merely on sufference from the city and no franchise for it has been obtained by the Southern Pacific Company. It is the contention of the city that the crossing of the two main line tracks of the Southern Pacific Company by the Municipal Railway should be maintained at an expense to be divided equally between the two parties at interest, and that the Southern Pacific Company should maintain the crossing of the spur track. It is the further contention of the City that it is customary in matters of this kind for the expense to be so divided, and that in this particular case, since the junior company is a municipal corporation, it is not necessarily fair to follow the usual

terms of such contracts . . . if they are not in accordance with the division of expense proposed by the City.

The representative of the Municipal Railway is clearly wrong in regard to the former matter. The Commission, almost without exception, in cases of this sort, has assessed the maintenance of new crossings against the junior companies, and the examination of many such applications heard by the Commission, when the division of expense had been previously agreed to by both interested parties, shows that in the majority of cases this division of expense has been on the basis of the junior company installing and maintaining the crossings. In a recent application before the Commission, under similar circumstances, the City of Los Angeles voluntarily entered into a contract with the Southern Pacific Company for two crossings in the City of Los Angeles in which it was provided that the expense of maintaining these two crossings should be borne by the City as the junior line.

In regard to this particular case I am of the opinion that the Municipal Railway in this connection should be treated as any other common carrier would be. If the City desires terms from the various companies which operate within its limits, favorable to its municipal lines, these matters should be covered by ordinance and in the franchises it grants, and I believe the Commission should make no departure from its usual practice, which has been found to be fair and equitable in other similar cases simply because, in this particular instance, the owner and operator of the junior road is a municipal corporation as well as a common carrier.

After the hearing the parties at interest, in a conference, revised the tentative agreement heretofore mentioned and submitted a copy of the same, as revised, to the Commission, which copy contained those matters concerning which the two parties were in agreement, and outlined those in which they had failed to agree and on which they wished a decision by the Commission.

In addition to the question discussed above and in close connection with it, is the question of granting to the Southern Pacific the right to enter upon these crossings and maintain them, sending bills therefor to the Municipal Railway, if the Municipal Railway does not keep them properly in repair. It appears to be standard practice to embody such a clause in contracts of this kind, and it seems necessary for the protection of the senior road that such a provision should be present in such contracts. I believe it entirely proper for such a clause to be added in this instance, and I believe that the customary provision obtaining in such cases, that 10 per cent can be added to the labor items to cover the cost of supervision and use of tools, is also proper.

I recommend the following form of order:-

O R D E R

CITY AND COUNTY OF SAN FRANCISCO, hereinafter called the Municipal Railway, having applied to the Commission for permission to construct its double track street railway at grade across the tracks of Southern Pacific Company, at Potrero Avenue and Division Street, as hereinafter indicated, in the City and County of San Francisco, California, and a public hearing having been held, at which all interested parties were represented, and the Commission being fully apprized in the premises,

IT IS HEREBY ORDERED, That the Municipal Railway be and the same is hereby granted permission to construct its double track railway at grade over three tracks of the Southern Pacific Company at Potrero Avenue and Division Street, in the place and manner shown on the map accompanying the application, subject to the following conditions, viz.:-

(1) The installation, operation, maintenance and protection of these crossings shall be in accordance with the tentative agreement as revised and filed with the Commission on March 23, 1915, except in regard to matters herein specifically mentioned.

(2) The entire expense of maintaining these crossings in a good and first-class condition shall be borne by the Municipal Railway, except as otherwise stipulated in the ordinance and franchise granted by the applicant to Southern Pacific Company.

(3) If these crossings are not maintained by the Municipal Railway in a safe and proper condition for the operation thereover of the trains of Southern Pacific Company, Southern Pacific Company shall perform such work thereon as may be necessary, and the Municipal Railway shall pay to Southern Pacific Company the cost thereof on demand, plus ten (10) per cent to be added to the labor items to cover supervision and use of tools, except as otherwise stipulated in the ordinance and franchise granted by the applicant to Southern Pacific Company.

(4) No train, motor or car of Municipal Railway shall be permitted by it to pass over said crossings without first coming to a full stop within twenty (20) feet thereof, and until one of the crew or other employee of Municipal Railway shall first go upon said crossings and ascertain that no engine, train, motor or car of Southern Pacific Company be upon or approaching said crossings in either direction, whereupon he may signal and permit his train, motor or car to proceed over said crossings if no engine, train, motor or car of Southern Pacific Company be upon or approaching same.

(5) The Commission reserves the right to make such further orders relative to the construction, maintenance and protection of these crossings, and the terms of agreement between the two companies in regard to same, as to it may seem right and proper, and it further reserves the right to revoke its permission in this regard if 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 26th day of March, 1915.

Max Thelen

W. D. Stoneland

Alex Gordon

Commissioners.