

Decision No. \_\_\_\_\_.

ORIGINAL

Decision No. 2418

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of railroads charging and collecting additional "train fares" from passengers boarding the trains at agency stations without tickets when opportunity to purchase same has been given. ) Case No. 728.

- Geo. D. Squires for Southern Pacific Company.
- E. W. Camp for The Atchison, Topeka and Santa Fe Railway Company.
- A. S. Halsted for San Pedro, Los Angeles and Salt Lake Railroad Company.
- Allan P. Matthew for Western Pacific Railway Company
- D. M. Swobe and Clarence M. Oddie for Western Association of Shortline Railroads.
- J. J. Goary for Northwestern Pacific Railroad Company.

LOVELAND, Commissioner.

O P I N I O N.

This case was brought upon the Commission's own motion for the purpose of investigating the practice of the railroads in this state, hereinafter referred to as the carriers, with reference to the charging and collecting of "train fares", i.e., fares in excess of ticket rates, in cases where passengers neglect to avail themselves of opportunities provided by such carriers to purchase tickets. The necessity for such investigation arose from the various complaints received by the Commission from persons from whom such excess rates or "train fares" have been collected.

The matter is one that at various times has engaged the attention of the Legislatures and Commissions of many of the States of the Union, and has also been considered and passed upon by the Interstate Commerce Commission. It has also been the subject of a hearing by this Commission upon complaint against the Northwestern Pacific Railroad Company (See opinions and orders of the Railroad Commission of the State of California,

Volume 2, page 910, Case 333), decided May 14, 1913. I shall hereafter refer to the cases in which the Interstate Commerce Commission and this Commission have considered this matter.

A proper consideration of the subject matter of this proceeding will, in my judgment, require the analysis of and answer to four questions, as follows:

First: Have common carriers the legal right to charge passengers, who board trains without providing themselves with tickets where they have had opportunity to purchase tickets, excess fare, on something more than ticket rates?

Second: If it is found that they have such legal right, is it to the benefit of the carriers alone or to both the carriers and the public to exercise it?

Third: When "train fares" are so collected should the excess be regarded as a penalty to be paid by the passengers for not purchasing tickets and therefore retained by the carriers, or should a refund check be given the passengers paying the excess, by means of which they may recover the excess from the agent of the carriers upon presentation of the refund check?

Fourth: As a penalty or refund, what is a reasonable excess for carriers to charge?

I shall consider these questions in the order in which they are mentioned:

First: As to the legal right of carriers to charge passengers who board trains without providing themselves with tickets where they have had the opportunity to do so excess fare, or something more than ticket rates, it may be that at common law carriers did not have this right. This question need not be considered in this case for the reason that there is no doubt as to the authority of Legislatures directly, or through regulatory bodies, to confer such right. Most of the States have by statute or by orders of Commissions conferred upon carriers the

right to charge and collect such train rates or excess fares and it has been held repeatedly by the courts that where a common carrier provides an opportunity for passengers to purchase tickets it is not illegal for it to enforce a penalty when passengers disregard such opportunity. Many cases in which the courts have ruled as to the reasonableness of such a provision in its various phases are found in Hutchinson's Law of Carriers, Third Edition, Volume 2, Section 1023, and decisions therein cited. In reviewing these cases Hutchison says:

"It is well settled that a regulation or by-law of a carrier is not unreasonable which provides that when such tickets are not procured before the commencement of a journey, and the carrier is therefore put to the inconvenience of collecting from the passenger his fare during its progress, the price of the carriage may be more than would have been charged for the ticket, and that on the refusal of the passenger to pay the higher fare, not extortionate or unreasonable in itself, he may be ejected."

The subject of train rates has been before the Interstate Commerce Commission, as before stated, in the case of Sidman vs Richmond and Danville Railroad Company, 3 I.C.C. 512. In that decision the Commission held that a regulation imposing a penalty for the payment of fares on trains was not unjust discrimination under the law. Five adjudicated cases and two text writers were quoted to sustain the doctrine of the Commission's decision. These citations are found in 3 I.C.C., 518. The most recent case in which it is held that the collection of train rates is not illegal is Kintrel vs. L. & N. R. Co., decided by the Supreme Court of Alabama on November 7, 1914, and reported in 62 Southern 576. This was an action for damages for ejection of plaintiff from a train of defendant. It appeared that plaintiff had refused to pay an excess fare which the Railroad Commission of Alabama had authorized the carriers of the state to collect. The Supreme Court upholds this order of the Railroad Commission authorizing the collection of train rates and uphold the judgment of the

lower court dismissing the complaint.

With reference to the right of the carriers in this state to charge excess fare where tickets are not purchased, when opportunity has been offered, and of the Railroad Commission of the State of California to legally promulgate such a ruling, a review of the laws enacted from time to time relating to this subject here follows:

Section 2189 of the Civil Code was enacted March 21, 1872, and reads as follows:

"A passenger upon a railroad train who has not paid his fare before entering the train, if he has been afforded an opportunity to do so, must, upon demand, pay 10 per cent in addition to the regular rate."

In the Act of April 1, 1878, entitled "An Act to Create the Office of the Commissioner of Transportation" the Legislature again expressed itself fully on this subject, providing in Chapter 1, section 15:

"If any passenger shall neglect to procure a ticket from the ticket office of the company at the station where he shall take passage, having an opportunity so to do, it shall be lawful for the company to demand and collect from him, in addition to the fare, as fixed by the regular tariff of such company, the sum of 10 cents (in all cases where such fare is less than \$1.00, and at the rate of 10 per cent on all fares in excess of \$1.00)."

Chapter 2, section 10 of this Act also provides as follows:

"All other acts and parts of acts in conflict with the provisions of this Act are hereby repealed so far as they conflict herewith."

It is my opinion that the courts will regard section 2189 C.C. as being in conflict with Chapter 1, section 15, of the Act of April 1, 1878, and that, therefore, section 2189 C.C. has been repealed by virtue of the repealing clause in Chapter 2, section 10 of the Act of April 1, 1878.

Even assuming, however, that section 2189 C.C. is not to be viewed as being in conflict with the Act of April 1, 1878,

Chapter 1, section 15 of this Act being a later and complete expression of the Legislature on this subject, has superseded and repealed section 2189 C.C.

In enacting Chapter 1, section 15 of the Act of April 1, 1878, the Legislature undertook to again express itself fully upon the subject matter of section 2189 C.C. The later statute is a complete revision of the subject matter of the first statute, and must, therefore, have been intended by the Legislature to be the sole expression upon this question. Accordingly, Chapter 1, section 15 of the Act of 1878 must have superseded and must be substituted for section 2189 C.C. This view accords with a principle frequently announced by the Supreme Court of this State. City and County of Sacramento vs. Bird, 15 Cal. 294, 296:

"It is true the law does not favor the repeal of statutes by implication, but it is not true that a statute, without negative words, will in no case repeal the provisions of a former one, unless the two acts are directly repugnant and inconsistent. Every statute must be considered according to what appears to have been the intention of the Legislature, and even though two statutes relating to the same subject be not in terms repugnant or inconsistent, if the latter statute was clearly intended to prescribe the only rule which should govern in the case providing for, it will be considered as repealing the original act."

Mack vs. Jastro 126 Cal. 130, 132:

"While it is true that repeals by implication are not favored, whenever it becomes apparent that a later statute is revisory of the entire matter of an earlier statute, and is designed as a substitute for it, the latter statute will prevail, and the earlier statute will be held to have been superseded, even though there be found inconsistencies or repugnances between the two."

To the same effect see:

State of California vs Conkling, 19 Cal. 501, 512.

Christy vs Board of Supervisors of County of Sacramento,

39 Cal. 1, 10.

In re Mitchell 120 Cal. 384, 387.

I am of the opinion, therefore, that the Act of April 1, 1878 has repealed section 2189 C.C.

Chapter 1, section 15 of the Act of April 1, 1878, remained in effect until the passage of the Wright Act, approved March 20, 1909, section 43 of which expressly repealed the Act of April 1, 1878. The repeal of the Act of April 1, 1878, which had repealed section 2189 C.C. did not, however, have the effect of reviving section 2189 C.C., for it has been definitely held by the Supreme Court of this State in People vs Hunt 41 Cal. 435, 439 that,

✓ "The repeal of an act repealing a former act does not revive the former act or give it any force and effect. This result can be accomplished only by the re-enactment of the former act."

It is my opinion, therefore, that at the present time, inasmuch as both section 2189 C.C. and Chapter 1, section 15 of the Act of April 1, 1878, have both been repealed there is now no statute expressly authorizing carriers to collect additional train fares from parties who have not purchased tickets before boarding the train after having an opportunity to do so. This being true how are carriers given the right to impose this excess charge? The answer is found in the Public Utilities Act.

If the carriers have filed with the Commission, in accordance with Section 14 of the Public Utilities Act, a schedule of fares and regulations, which makes provision for the collection of excess train fares upon failure to purchase a ticket before boarding the train, where facilities for such purchase were available, of course, they have the right to make this collection. The carriers of this State have complied with the requirements of Section 14 of the Public Utilities Act in this regard and the authority to collect excess train fares results from this fact that the carriers have filed with the Commission a schedule including this fare. This schedule, of course, can at any time be altered by the Commission so that there is no statute now in force which will in any way restrict the Commission in prescribing such regulations

as it deems expedient upon the question of the collection of excess train fares.

Second: Does it benefit carriers or the public, or both, to exercise the right of charging and collecting such excess fares?

The carriers undertake to perform a certain service for the public. The obligation is laid upon them to perform that service at reasonable rates, and regulatory bodies, State and Federal, are given authority to see that such obligation is properly discharged; but, there is a higher duty than that, namely to conserve the safety of the public while serving it. The primary object of charging train rates in excess of ticket rates is to induce passengers to purchase tickets, not, as is thought by some, to insure the safety of the revenue to the carriers but rather to enable conductors to quickly attend to the collection of tickets and have time to devote to the proper and safe handling of their trains. I have ridden extensively on railroad trains for many years but I must confess that until the hearing of this case I had but a faint idea of the manifold duties, the discharge of which is incumbent upon passenger conductors, and I am of the opinion that the public generally is no better informed than I was.

I quote from the testimony of a conductor of thirty-two years railroad experience, twenty-eight years as a conductor:

MR. SQUIRES: Mr. Engwicht, tell us what your duties are in running a passenger train, what you have to do in addition to collecting fares.

A. Well, I leave here of an evening and my duty is to see that my brakeman - I go to my brakemen and see that they are fit to go out, that they are there on time, 30 minutes before time, go to the rear end and see that my markers are properly displayed, go to the front end and see that the engine has markers properly displayed, receive my orders, notify the Pullman man what stops I have to make and to take on passengers, and all those things. I leave there, and as I say, when we start to take up our transportation we come up against those snags in that way where people want this done and that done. I have maybe two or three trains to meet in the first 50 miles.

Also the engineer will slow down, the signal will be against him, and I am supposed to find out and to know why that signal is down. I have to make a detailed account at the end of my trip for every 30 seconds delay, and why, and segregate it, so that my office and my work and everything is right in my hands there, and as I told you, when I am transacting business with you you are apt to ask me some questions or other. By the way, I believe your Honor asked me one morning something in regard to the dining car proposition, if you remember?

COMMISSIONER LOVELAND: More than likely, if I was hungry.

A. Yes, you would, and while I am talking to you I have a dozen other things. I have trains to meet very often and maybe at that minute they are whistling for the station and I will run out and run out quick, too, and lots of passengers think we are not treating them with courtesy we should when we get up and leave them in a minute like that.

MR. SQUIRES: When your train stops you have to get off, do you not?

A. Have to get off and see that my passengers get off, start the train and get back on again, and into the same routine again. We also have government tests made by us. The train is stopped by some government man to see whether we live up to the government rule of the block system proposition, and those things, as I say -- you are held responsible for the whole business from the engineer to the markers.

Q. And of course, that takes up a large portion of your time?

A. Takes up all of your time -- really takes up all of your time.

Q. Out of all the fares that you would collect on an ordinary train running between San Francisco and San Luis Obispo, if 25 per cent of them were cash fares would it so interfere with your duties that you would be obliged to have an assistant?

A. Yes sir, I could not do it; it would be utterly impossible.

Q. That is, it is only from the fact that a cash fare is occasionally presented that you are able to get away with it at all?

A. To get away with it at all, yes sir."

Other testimony, given by conductors of long experience, was equally interesting and pointed, going to establish the fact that as little time as possible should be required of conductors in collecting fares, and I shall refer to such testimony later in this opinion, when commenting upon the difference in the character of the service re-



quired in collecting tickets as against collecting fares. I believe the testimony in this case amply justifies my finding that excess fares, or train rates, should be collected from passengers boarding trains without tickets, without reasonable excuses for not having purchased same, provided that carriers have the right, under the law, to collect such excess.

This brings me to the consideration of the third question, namely, when "train fares" in excess of ticket rates are collected from passengers not provided with tickets, who have had reasonable opportunity to purchase same, should such excess be considered a penalty and retained by the carrier, or refunded by means of a refund check to the passengers? In answer to this question I find, as a fact, that the excess should be considered a penalty and should be retained by the carriers, and my reasons for this finding are as follows:

Keeping in mind the manifold duties devolving upon conductors and the real necessity, in the interest of public safety, for putting just as little <sup>extra</sup> work upon them as possible, I will now consider whether more passengers will board trains without tickets if assured of a refund than will if the excess is retained by carriers as a penalty. It seems to me reasonable to assume, on general principles, that if passengers know that they are to get any excess, they may have to pay for not having tickets, refunded, they will not be as particular about buying tickets; and that was testified to as a fact by several witnesses in this case.

Case 333, supra, was decided May 14, 1913. In the decision in that case the Northwestern Pacific Railroad Company was ordered to publish and put into effect the refund system on portions of its lines, other than within commutation limits on trains operated by electric motive power. The General Passenger and Ticket Agent of that road testified, in the present hearing, that as a

result of establishing the refund system the number of passengers boarding trains at agency stations without tickets increased 21% after allowing for the average increase due to the increase in travel generally. Other witnesses testified that their experience convinced them that passengers were much more liable to board trains without tickets under the refund system as compared with the penalty system.

Another matter of importance is the time consumed and the expense to carriers incidental to the refund system. It is probably true that the expense connected with refunding excess fare, comprehending as it does the time of the conductor in making the check, of the agent in cashing it and making returns therefor, postage, etc., would mean an expense to the carriers of at least half, and possibly more than half, of the amount collected as excess and refunded.

There is one thing more which was developed by the testimony in this case which I regard as worthy of mention in the consideration of the matter generally. The conductors, who testified in the hearing of this case, all laid particular stress upon the danger which inured to conductors by having in their possession the rather large sums of money necessary to make change where many passengers paid "train fares". They explained that if a train stopped, for any cause, it was the conductors' duty to immediately leave the train and ascertain the cause, and that to do this it was frequently necessary to walk the length of the train and that when such supervision was necessary in the nighttime there was grave danger of their being slugged and robbed, particularly if it were known that they carried any considerable amount of money on their person.

In view of all these circumstances it seems evident to me that carriers are justified in taking reasonable steps to induce

passengers to purchase tickets, not alone in their own interests but in the interest and for the safety of the public, particularly in view of the fact that the testimony in this case shows the reasonable manner in which the carriers handle the subject.

Testimony was offered by witnesses connected with the management of different roads to the effect that conductors were always instructed to accept any reasonable excuses from passengers who had boarded the train without tickets, such excuses being that the depot was closed, or the agent away from the ticket window checking baggage, or the fact that so many people were waiting to buy tickets that the agent could not wait upon them all, etc., in fact, any reasonable excuse, and to only collect train rates when it was clearly apparent that the passengers could have purchased tickets but did not do so.

In preparing for the hearing of the case at bar the Commission made an extended investigation into the question of "train fares", which investigation disclosed the fact that in several of the States in which the refund system was heretofore in effect that system has been discontinued and the penalty system now is in operation, and that there are now sixteen States in which the excess is refunded and twenty-six States in which it is retained by the carriers.

Finally, I quote from a decision rendered by the Railroad Commission of the State of Colorado, December 11, 1914, entitled "In the Matter of an Investigation and Hearing, on motion of the Commission, of the rules and practice of charging excess passenger fares and the subject of refunding the same on the part of the following common carriers", as follows:

"The hearing before the Commission was quite general and exhaustive, and, from the evidence produced, the Commission is of the opinion that one system should be adopted throughout the State of Colorado. The Commission also finds that it would be to the best interests of the different common carriers and the general public that a small uniform excess cash fare be charged. This would induce the general traveling public to purchase tickets on boarding trains, and, in this way, better enable the common carriers to check and ascertain the exact number of passengers carried and the exact earnings of the companies in carrying passengers. The Commission believes that this practice will have a tendency to allow the companies to collect fares from all persons whom they carry and will give them a better check on the same. The Commission is also of the opinion that, in order to accomplish this object, it is better that no cash fares be refunded; ..."

Having found that an excess or train rate should be charged, and that it should be in the nature of a penalty, and retained by the carriers, I will now consider the fourth question involved in this matter, namely, what amount should be charged? This is a matter of opinion in support of which I cannot give the weight of much testimony but from the investigation, made by the Commission prior to this hearing in California, and of the practice in other States, I find as a fact that the following train rates, which are now and have for years been in effect in this State, are reasonable:

Where the one-way ticket fare is <sup>5</sup>\$0.10 to \$1.45, an excess charge of 10¢ should be added,  
 Where the one-way ticket fare is \$1.50 to \$1.95, an excess charge of 15¢ should be added,  
 Where the one-way ticket fare is \$2.00 to \$2.45, an excess charge of 20¢ should be added,  
 Where the one-way ticket fare is \$2.50 to \$2.95, an excess charge of 25¢ should be added,  
 Where the one-way ticket fare is \$3.00 to \$3.45, an excess charge of 30¢ should be added,  
 Where the one-way ticket fare is \$3.50 to \$3.95, an excess charge of 35¢ should be added,  
 Where the one-way ticket fare is \$4.00 to \$4.45, an excess charge of 40¢ should be added,  
 Where the one-way ticket fare is \$4.50 to \$4.95, an excess charge of 45¢ should be added,  
 Where the one-way ticket fare is \$5.00 and over, an excess charge of 50¢ should be added.

Provided, however, that where passengers board trains at non-agency stations, or where for any reason, for which they are not responsible,

they are unable to purchase tickets, no excess fare will be charged, and provided further, that all passengers may have the privilege of purchasing tickets at the first station where tickets are sold at which the train stops, in which case the excess scale herein provided shall not apply. If, however, the ordinary time during which the train stops is not sufficient for the passenger to alight from the train, procure his ticket and board the train again, it is not incumbent upon the carriers to have the train wait for him to purchase his ticket and return.

I further find/<sup>as a fact</sup> that where common carriers accord half fare rates to children between the ages of five and twelve years, one-half of the excess fare provided above may be added in cases where such children are not provided with tickets where facility to purchase same was available.

It is my opinion, therefore, as to the whole case, first; that under the law of the State of California this Commission has the power to authorize carriers to charge train rates, or excess fare over ticket rates, to passengers not holding tickets having had the opportunity to purchase tickets, second, I find as a fact that it is to the interest of the public as well as to the interest of the carriers that such train rates, or excess fare, should be charged and collected, and that the excess so collected as train rates should be considered a penalty and retained by the carriers. I further find as a fact that the scale of train rates, or excess charges, mentioned above, is just and reasonable.

I submit herewith the following form of order:

#### O R D E R

The Railroad Commission of the State of California having undertaken, on its own motion, an investigation into the matter of the railroads of this State charging passengers who board trains without tickets, where they have had opportunities for purchasing

tickets, something more than the ticket rates, and a regular hearing having been held in San Francisco on May 5, 1915, and the Commission, ~~order~~ having given exhaustive consideration to the whole matter, as set forth in the opinion preceding this order,

THE COMMISSION HEREBY FINDS AS A FACT that it is to the interest of the public, as well as to the interest of the carriers, that such train rates, or excess fare, be charged and collected and that the excess so collected as train rates should be considered a penalty and retained by the carriers; and

THE COMMISSION HEREBY FURTHER FINDS AS A FACT that the following scale of train rates, or excess over the regular ticket fare, is just and reasonable:

Where the one-way ticket fare is \$0.10 to \$1.45, an excess charge of 10¢ should be added,  
Where the one-way ticket fare is \$1.50 to \$1.95, an excess charge of 15¢ should be added,  
Where the one-way ticket fare is \$2.00 to \$2.45, an excess charge of 20¢ should be added,  
Where the one-way ticket fare is \$2.50 to \$2.95, an excess charge of 25¢ should be added,  
Where the one-way ticket fare is \$3.00 to \$3.45, an excess charge of 30¢ should be added,  
Where the one-way ticket fare is \$3.50 to \$3.95, an excess charge of 35¢ should be added,  
Where the one-way ticket fare is \$4.00 to \$4.45, an excess charge of 40¢ should be added,  
Where the one-way ticket fare is \$4.50 to \$4.95, an excess charge of 45¢ should be added,  
Where the one-way ticket fare is \$5.00 and over, an excess charge of 50¢ should be added.

IT IS HEREBY ORDERED that the Railroad Companies, common carriers of California, as defined later in this order, on and after the effective date of this order, are authorized and directed to collect the following train rates, or excess fare, from passengers boarding trains without tickets where opportunities for the purchase of tickets have been afforded:

Where the one-way ticket fare is \$0.10 to \$1.45, an excess charge of 10¢ should be added,  
Where the one-way ticket fare is \$1.50 to \$1.95, an excess charge of 15¢ should be added,  
Where the one-way ticket fare is \$2.00 to \$2.45, an excess charge of 20¢ should be added,  
Where the one-way ticket fare is \$2.50 to \$2.95, an excess charge of 25¢ should be added.

Where the one-way ticket fare is \$3.00 to \$3.45, an excess charge of 30¢ should be added,  
Where the one-way ticket fare is \$3.50 to \$3.95, an excess charge of 35¢ should be added,  
Where the one-way ticket fare is \$4.00 to \$4.45, an excess charge of 40¢ should be added,  
Where the one-way ticket fare is \$4.50 to \$4.95, an excess charge of 45¢ should be added,  
Where the one-way ticket fare is \$5.00 and over, an excess charge of 50¢ should be added,

and that such train rates, or excess over the regular ticket fare, shall be retained by the carriers as a penalty.

Provided, however, that where passengers board trains at non-agency stations, or where for any reason they are unable to purchase tickets, no excess fare will be charged, and, provided further that all passengers may have the privilege of purchasing tickets at the first station where tickets are sold at which the train stops, in which case the excess scale herein provided shall not apply. If, however, the ordinary time during which the train stops is not sufficient for the passenger to alight from the train, procure his ticket and board the train again, it is not incumbent upon the carriers to have the train wait for him to purchase his ticket and return.

IT IS FURTHER ORDERED that where children between the ages of five and twelve years ~~although~~ are permitted to travel for half of the ticket fare shown in the tariff for adults, one-half of the excess fare provided above may be added.

IT IS FURTHER ORDERED that this order, <sup>and the</sup> rules and regulations herein provided for, shall apply to common carriers operating steam railways within the State of California, and shall not apply to any inter-urban, or suburban electric, or street railway within the jurisdiction of this Commission, nor to such railways when operated by steam railways.

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 24<sup>th</sup> day  
of May, 1915.

Max Thelem

W. A. Loveland

W. S. Gordon

Francis R. DeWitt

Commissioners