Decision No. 353

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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Decision No. 353

ORIGINAL

E. F. JORDAN,

Complainant,

- vs. -

OCEAN SHORE RAILROAD COMPANY, (a corporation),

Defendant.

Case No. 330.

H. H. McClosky and F. V. Meyers, for Complainant.

Page, McCutchen, Knight & Olney, and A. C. Greene, for Defendant.

LOVELAND, GORDON and EDGERTON, Commissioners.

OPINION

In this action the complainant prays for an order of the Commission directing the defendant to continue in service two morning trains arriving in San Francisco at about the hours of 7:30 A.M. and 8:40 A.M. The complaint is the result of an announcement on the part of the defendant that it proposes during the winter months to discontinue the train arriving at 8:40 A.M., it being the practice of the defendant to take off one train during the winter season. The complainant alleges that if this train is withdrawn from service, it will be impossible for a large number of people to live at their present homes along the line of the defendant and do business in the City and County of San Francisco, and further, that no good reason exists for such train not being operated by the defendant carrier.

The defendant, in its answer, denies that the withdrawal of the train arriving at San Francisco at present at 8:40 A.M. would work any great hardship on the people now living along its line and that the train now arriving at 7:30 A.M., which it is proposed to

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continue in service, is ample to reasonably accommodate all persons desiring to travel during the winter months. The defendant sets up in its answer the fact that during the period from November 6, 1911, to April 20, 1912, but one passenger train was run each morning from Half Moon Bay to San Francisco and that the average number of passengers who traveled on this train on each week day was 39.87 and that of this number 15.42 were so-called commuters.

We will not at this time discuss the defendant's answer with reference to the earning capacity of its early morning passenger trains. At the hearing, the complainant introduced evidence to prove that the withdrawal of the train arriving at 8:40 A.M. would cause great inconvenience to the traveling public, particularly, the commuters whose business in San Francisco was such that made it very convenient to use this train. Testimony was given to the effect that the territory tributary to the line of the Ocean Shore Railroad was being retarded in development because of the inadequate train service and that the withdrawal of this train would result in compelling the few people now residing along the line to abandon their homes. Testimony offered by the defendant was not controverted and was to the effect that during the month of October, 1911, during which period two morning trains were operated, a total of 1686 passengers were carried, or an average per day of 54.4. During the month of October, 1912, the same trains carried 1681 passengers, or an average of 54.2 passengers per day. These figures indicate to the Commission that the business of the two years is on an equal footing.

From the evidence introduced by the defendant, it appears that the total earnings from passengers carried on the two morning trains during the month of October, 1911, amounted to $637.69, or an average of $20.56 per day. During the month of October, 1912, the same trains earned $544.36, or an average of $17.55 per day. During the period November 1, 1911, to

April 30, 1912, during which time but one train was operated, the passenger receipts amounted to $2629.22, or an average of $14.45 per day. This would indicate that during the winter months when but one train was operated the passenger receipts average $3.10 per day less than the receipts of the two trains for the balance of the year.

In other words, the operation of these two trains during the period - April 30th to November 1st - resulted in an increase in revenue to the railroad of $3.10 per day over what was received from the operation of one train during the winter months.

During the period - November 6, 1911, to April 20, 1912, the average number of passengers carried on the one train which was operated at this time was 39.87. An investigation of the records of the Ocean Shore Railroad indicates that from November 1st to November 26th, 1912, inclusive, Train No. 2 averaged 17.3 passengers per day and Train No. 4 averaged 30.6 passengers per day. This indicates that approximately 48 passengers per day patronized the two morning trains during the best part of November of this year and in comparison with the travel from November 6, 1911, to April 20, 1912, during which time the average travel was 39.87 passengers per day on one train, it would appear that in the month of November of this year, the average travel on two trains was approximately eight passengers more than patronized one train during the winter months of 1911-12.

From the testimony, it appears that the average number of commuters carried on the two trains during the month of October, 1911, amounted to 24.2 per day, and that during November, 1912, the average number of commuters carried on both trains on week days amounted to 24.3 per day. During the period - November, 1911, to A pril, 1912, the average number of commuters carried was 15.42 per day on the one train operated.

From these figures it will be seen that during the winter months, 1911-12, when one train was operated, the defendant carried approximately nine less commuters per day than it did on two trains during the month of October, 1911. From the record of travel on these two trains, it would appear that if the Ocean Shore Railroad is permitted to discontinue the operation of one train, it will carry approximately nine less commuters per day, provided, of course, the history of the year before is repeated and the same decrease in commutation travel occurs this year as last. The question, then, to consider is whether the defendant should be required to run an extra train primarily to carry nine passengers riding on commutation tickets, the maximum receipts from the sale of which tickets will not exceed Sixty (60) Dollars per month.

We believe the records clearly show that the Ocean Shore Railroad, except during the summer months when excursions are run, operates its passenger service at a loss. And we believe that until this road is put in shape and operates in a manner which will attract home-seekers that it will continue to operate its passenger trains, except during the summer months, at a decided loss.

Considerable time was taken up at the hearing examining witnesses with reference to the cost per day of operating the train which the complainant desires should be kept in service. Witness for the defendant testified that it would cost approximately $84. per day and included in this cost is a proportion of overhead and maintenance expense. It was admitted, however, that no additional overhead expense or maintenance of track, roadway and such like items would be incurred by the running of this particular train and for the purposes of this case, we will assume that the actual cost of running this train will be

$40. per day, or approximately $1200. per month, which figure is arrived at after a very careful investigation. From the record of travel during the time two trains were operated in 1911 as against one during the winter months of 1911-12, and also considering the travel of this date, we are of the opinion that at best the increased revenue which the Ocean Shore Railroad will derive from the operation of two trains during the winter months will amount to $100. per month. We then come to the question of whether or not in justice to the defendant, we must ask it to expend $1200. in order to receive $100. in revenue.

Railroads under normal conditions never handle, nor do they expect to handle, as many passengers during the winter months as during the summer season and as a rule the winter service is more restricted than that of summer. It has not, however, been the practice of well established railroads to restrict their winter commutation service except in cases where such commutation trains run between summer resorts and large cities, which summer resorts are closed during the winter period.

From our investigation, it appears that in the years 1909, 1910 and 1911, the Ocean Shore Railroad was invariably operated at a heavy loss during the winter months. This deficit during the winter months of these years runs from $7,000. to $16,000. per month. In fact, the road appears to have been operated at a loss in all but three months of 1909; two months of 1910; 4 months of 1911. In the year 1912, however, the road appears to have been more fortunate than in previous years and has paid something over operating expenses in all but three months to date.

It is a matter well known to the Commission that the Ocean Shore Railroad has been seriously handicapped by reason of its inability to raise money to make many needed improvements to its line. Its service has been frequently interrupted during the winter period for many days at a time due to slides at points where the line skirts the bluffs above the ocean. The condition of the motive power and rolling stock is far from the best which accounts for the heavy maintenance of equipment expense. The conditions surrounding the maintenance of this property are very different from those of large lines. The expense of operating an additional train 60 miles a day by a large line would be of very little consequence.

In disposing of this controversy, we must, therefore, consider all of the conditions under which the defendant's line is operated, including the necessity for raising money to put the road in safe condition to operate and to provide additional equipment.

The complainant urges that the road is in a good, healthy financial condition. In this, we can not agree. The road has little, or no, working capital and under conditions which ordinarily prevail during the rainy season, heavy expenditures will be required to keep the road open at all.

In order to ascertain the facts concerning the financial condition of the road and the obligations which would have to be met during the next few months, the Commission made some investigations and finds that there is approximately $22,000. cash on hand from the operation of the road. There is approximately $56,000. in the hands of various parties, namely, the former receiver of the road and the Mercantile Trust Company. This money, however, is not available at the present time and a considerable length of time may elapse before it is. In the meantime, in order to keep the road running so that there may be no delay in operating trains from the terminus at 12th and Mission Streets, San Francisco to Tunitas Glen, we find the following sums of money must be obtained for the several purposes below mentioned:

Steam Shovel	$7100.
Paving Streets ordered by the San Francisco Supervisors	12000.
Two steel bridges to replace wooden bridges in San Francisco, ordered by the Supervisors of San Francisco,............................	18000.
Taxes- Second Installment-	5400.
Purchase of five pieces of right of way in San Francisco,...............	60620.
Working capital to pay operating expenses during the winter months which months have always shown a deficit,............................	30000.
TOTAL,............	$133120.

To meet these expenditures the defendant has on hand $22,000. with the possibility of securing $56,000. additional. It is absolutely necessary, in order that this property may be operated continuously that a steam shovel be provided to take care of slides, if any occur, during the winter months. Street paving is now being done and must be paid for. The rights of way to be acquired cover land over which the railroad is now operating without any title, or right, and unless purchased, the defendant is in a position where the owner of the property could remove rails from his property, thereby preventing any through service whatever.

From the records, of previous years it is apparent to us that $30,000. working capital is hardly sufficient to carry the road through an ordinary winter.

Because of the various suits now pending against the present company by former bondholders, it is impossible at this time to borrow money to make much needed improvements and meet current obligations and until these suits are disposed of, it is of the utmost importance, not only to the owners of the property, but to all who patronize the road, either by traveling or shipping freight, that no obstacles be placed in the way of the management for keeping the road open for at least some kind of service.

We state frankly that we believe if the Ocean Shore road were in a financial position to stand the drain, it would be good business to keep the two trains in operation during the winter months. Because, in our opinion, it would have a tendency to establish confidence in the project and with this confidence would come a healthy gain in population along the line. We believe, however, that this is an inopportune time for complainant to insist on this road's maintaining a two train service at an expense of $1200. per month, which will not, in our opinion, increase the revenue of the road over $100. per month. If the road at this time were not beset with law suits and had ample equipment in good repair and were not facing large expenditures to purchase rights of way which is already mortgaged, in other words, if this road were in a sound financial condition, we would not be inclined to permit this train to be taken off. Under all the circumstances in the case, which have received our most careful consideration, we are of the opinion that it would be unreasonable at this time to require the defendant to continue two passenger trains in service and we will, accordingly, permit the withdrawal of one morning passenger train from service after December15, 1912.

The Commission will expect the two train service to be resumed March 15, 1913, unless conditions make it practically impossible to do so. We desire at this time to notify the Ocean Shore Railroad that the Commission expects it to improve its roadbed and provide proper equipment before November, 1913.

There is no question in our minds but that a modern service will prove of great benefit to the Ocean Shore Railroad. There are many very attractive places on this line for suburban homes and resorts and the owners of the railroad should find some way of removing the obstacles which prevent the raising of capital to provide the much needed improvements. In this way only can the owners of the road fulfill their obligations to the public to provide modern and safe service.

Thousands of people have purchased property along this line with the intention of building homes. Real estate operators were promised an elaborate electric service by the original promoters of the road and the original promoters of the line themselves sold a very large amount of propertyto homeseekers on such promise.

Material for construction and operation of an electric railway, including cars and power house equipment, was ordered and the structural steel for the building having been received, was advertised extensively as a means of inducing innocent persons to purchase property along the line, notwithstanding the affairs of the road were in a critical condition at the time.

It may be true that the present owners of the road did not make the promises to persons purchasing the property, nevertheless, many of the present holders of securities held bonds or stock in the original company and must have been aware of the representations made to investors to induce them to purchase property.

The Commission proposes to use all the power it possesses to see that the territory served by the Ocean Shore Railroad is provided with adequate transportation facilities and that thousands of property owners who want to become patrons of the line are not denied the privilege.

While we are permitting one morning train to be withdrawn for the reason that our investigation develops the fact that the road can ill afford at this time to stand any financial loss whatever, we most strongly urge that the parties interested in the ownership of the line get together on some common ground and provide the means for rehabilitating the property in order that the road may be brought up to its maximum earning capacity and the public furnished the service to which it is entitled.

Since this case was submitted, the Commission has been in receipt of protests signed by several hundred citizens residing along the line of the Ocean Shore Railroad and these protests have received our earnest consideration. In permitting this train to be withdrawn, we have considered the case from every possible angle and believe that, in view of the financial condition of the property, harassed as it is by law suits among the contending factions claiming an interest in the ownership of the road that the best interests of the public lie in keeping the road in operation for the present with at least some kind of service. Rather than burden the road at this time with the additional expense incident to the operation of two trains, we feel that the public interests require that every precaution be taken to keep the road open during the winter.

It must be borne in mind particularly by applicant and by those who have supported the application by petition that their request is not for a continuation of such service as has been given in the past, but rather for an additional service over the winter schedules, which have been in effect since the operation of the road began.

We recommend that the complaint be dismissed and submit the following form of order:

O R D E R.

A complaint having been filed in the above entitled case and a hearing having been duly held therein and good reasons appearing therefor as set forth in the foregoing Opinion, IT IS HEREBY ORDERED that the complaint be and the same is hereby dismissed without prejudice.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission.

Dated at San Francisco, California, this 3rd. day of December, 1912.

H. D. Loveland

Alex Gordon

Edwin O. Edgerton

Commissioners.