

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

ORIGINAL

Decision No. 3815

BEFORE THE RAILROAD COMMISSION OF  
THE STATE OF CALIFORNIA.

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In the Matter of the Application of )  
 C.L. HOVEY, Receiver for the )  
 BOCA AND LOYALTON RAILROAD COMPANY. )

Application No. 2585.

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A.E. Bolton for applicant.  
 Allan P. Matthew for A.R. Baldwin.

LOVELAND, Commissioner.

O P I N I O N .

In this application, C.L. Hovey, receiver of Boca and Loyaltan Railroad Company, asks permission to sell and transfer the property of the company to A.R. Baldwin for the sum of \$35,100.

The petition herein recites that on June 8, 1915, the Superior Court of Nevada County, in an action entitled Mercantile Trust Company of San Francisco vs. Boca and Loyaltan Railroad Company, et al, appointed C.L. Hovey receiver of Boca and Loyaltan Railroad Company; that on May 11, 1916 a decree of foreclosure was entered in said Superior Court of Nevada County authorizing the sale of all the property of Boca and Loyaltan Railroad Company to pay the outstanding bonded indebtedness; that on September 8, 1916 all of the property of the Boca and Loyaltan Railroad Company was sold to A.R. Baldwin for \$35,100; that on October 2, 1916 the Superior Court of Nevada County confirmed the sale and directed H.E. Phleger, the commissioner appointed in the proceedings, to execute to said A.R. Baldwin a deed and conveyance of all the property of Boca and Loyaltan

Railroad Company.

Boca and Loyalton Railroad Company was incorporated September 25, 1900. The company owns a standard gauge line of railway extending from Boca, located on the line of the Southern Pacific Company in Nevada County, to Hawley on the line of the Western Pacific Railroad Company in Plumas County, a distance of 42.35 miles. Between Hawley and Portola the company operates over the lines of the Western Pacific Railroad Company, a distance of 2.75 miles. It is an industrial railway, constructed in connection with various lumbering enterprises. Most of the timber adjacent to the railway has been cut with the result that during the past few years the earnings of the road have been inadequate to pay operating expenses and fixed charges. The Company reports revenues and expenses as follows:

	<u>1913</u>	<u>1914</u>	<u>1915</u>
Operating Revenues	\$92,434.35	\$74,704.43	\$46,894.94
Operating Expenses	<u>71,485.87</u>	<u>65,669.81</u>	<u>42,668.24</u>
Net Operating Revenue	\$20,948.48	\$ 9,034.62	\$ 4,226.70
Tax Accruals	<u>4,612.60</u>	<u>4,754.71</u>	<u>3,330.61</u>
Operating Income or Loss	\$16,335.88	\$ 4,279.91	\$ 896.09
Other Income:			
Hire of Equipment	--	3,556.35	332.55
Miscellaneous	<u>--</u>	<u>124.99</u>	<u>210.44</u>
Gross Income	<u>\$16,335.88</u>	<u>\$ 7,961.25</u>	<u>\$ 1,439.08</u>
Deductions:			
Hire of Equipment, etc.	\$ 1,530.62	\$ 3,933.96	\$ 4,171.96
Interest on Funded Debt	25,970.00	25,388.48	23,351.66
Interest on Unfunded Debt	827.02	891.20	930.36
Miscellaneous	<u>--</u>	<u>81.60</u>	<u>273.88</u>
Total Deductions	<u>\$28,327.64</u>	<u>\$30,295.24</u>	<u>\$28,727.86</u>
Net Loss	\$11,991.76	\$22,333.99	\$27,288.78
Appropriations to Reserve Fund	<u>30,000.00</u>	<u>30,000.00</u>	<u>27,500.00</u>
Loss for Year	\$41,991.76	\$52,333.99	\$54,788.78

Boca and Loyalton Railroad Company has a bonded indebtedness of \$412,000. The bonds are dated 1903, bear 6% interest and mature in 1923. The payment of the bonds

is secured by a mortgage and deed of trust covering all the property of Boca and Loyalton Railroad Company and the deposit in trust of \$556,000 face value of Roberts Lumber Company bonds.

The evidence submitted in this proceeding clearly shows that the company as at present financed cannot meet its operating expenses and interest.

The holders of the bonds of the railroad have organized a committee, which controls \$360,000 out of the total of \$412,000 of bonds outstanding, or more than 87 per cent. This committee consists of Frederick Baruch, H.P. Young and B.H. Dibblee. It favors the sale of the railroad property to A.R. Baldwin for \$35,100. This committee, as well as C.L. Hovey, the receiver, is of the opinion that a sufficient sum will be realized from the Roberts Lumber Company bonds to pay the Boca and Loyalton Railroad Company bonds in full.

The \$556,000 face value of Roberts Lumber Company bonds are, as reported by the bondholders committee, a first lien on the property of that company consisting of approximately 645,000,000 feet of standing timber, a lumber mill and approximately 26,000 acres of cut over land, all of which has been appraised by C.L. Hovey at \$1,156,000.

The bondholders committee in a letter filed with this Commission further reports:

"No steps have been taken looking toward the sale of the \$556,000 face value of Roberts Lumber Company bonds which are pledged to secure the payment of the Boca & Loyalton Railroad Company bonds. A suit has, however, been filed to foreclose the mortgage securing the Roberts Lumber Company bonds, and we understand that this suit is to be brought to a conclusion as soon as possible after the amount of the deficiency judgment against the Boca & Loyalton Railroad Company has been fixed. This cannot be finally established until it is definitely known whether or not the sale of the Boca & Loyalton Railroad is to be consummated. It is primarily for this reason that the Bondholders Committee is anxious that a favorable decision in this application be handed down at the earliest possible moment."

It is patent that the value of the Boca and Loyalton Railroad Company property considered as a collection of rails, ties and parcels of real estate is in excess of \$35,100. Mr. Sachse, chief engineer for the Railroad Commission, testified that the "scrap value" of the railroad would prove to be very much more than the sum for which it was herein proposed to be sold. Mr. A.E. Bolton, counsel for the receiver, expressed the view that the property has a higher "scrap value" than "going concern value".

Mr. Allan P. Matthew, representing A.R. Baldwin, the purchaser, stated that Mr. Baldwin was really acting for the Western Pacific Railroad Company. In regard to the value and disposition of the property, Mr. Matthew said:

"So far as the value of the property is concerned,-- and this leads directly to your Honor's question,-- I think Mr. Bolton is absolutely right when he says it is doubtful whether it has any value as a railroad property. Your Honor will recall that when the Western Pacific property was before this tribunal with a view to determining what the up-set price should be they did not take the so-called physical value of the property or the scrap value or any other such criterion. The attempt was to fix a reasonable price on what it would earn as a going concern, but Boca & Loyalton has no value from that point of view, and so I take it that at the sale of the property there was simply a contest between the Western Pacific, which conceivably could make some little use of that little line, and the junk dealer, and the junk dealer was willing to go up to \$35,000 and no higher and the Western Pacific was willing to go fifty or a hundred dollars higher than that. Now I don't believe that anybody having any familiarity with the property of the Boca & Loyalton would ever bid anything more, but whether they do so or not the proper place to make that objection, as I have stated, was before the Superior Court of Nevada County. The sale has been confirmed and there has been no objection and it is too early to say just what the Western Pacific, which will probably take the property over from Mr. Baldwin, will do with it. I take it they will make the best use possible of it and operate it to such extent as they may and then take up before this Commission such questions as may arise in connection with the ultimate disposition of the property as such. Certainly no other institution than the Western Pacific could ever hope to operate it."

In reply to a question from the presiding commissioner, as to the policy to be pursued by the Western Pacific Railroad

Company in relation to the Boca and Loyalton Railroad Company's road, Mr. Matthew answered:

"I would not want to answer offhand as to the legal obligations but I think I would say this, if the Western Pacific acquires a going concern, it is subject to all the disabilities and obligations incident thereto, and I take it we would be under the necessity of coming to the Commission and applying for authority to discontinue any service or abandon any part of the line we desired to abandon; in other words, I think you have absolute control over the operation of the road in the hands of Mr. Baldwin or the hands of the Western Pacific, just as you have had heretofore in the hands of the receiver."

There are two distinct issues involved in this proceeding; first, that which pertains to the interest of the Boca and Loyalton bondholders, and second, the obligation of public service that go with the transfer of the Boca and Loyalton property.

It appears that the committee representing the Boca and Loyalton bondholders is satisfied with the sale at the price named and is convinced that, in any event, the Boca and Loyalton bondholders will be paid in full. They, of course, can ask no more than that.

No one appeared in behalf of the stockholders of the Boca and Loyalton Railroad Company and we may assume, therefore, that these stockholders have no objections to advance before this tribunal.

I think it is clear that the prospective purchaser of this railroad property understands that his acquisition carries with it all of the obligations of service which now attach to the Boca and Loyalton Railroad Company. It is clear also that the purchase is being consummated at a figure which is so low that it would not be wholly justified if it contemplated the abandonment, dismemberment and sale of the component parts of the railroad property. While there is no complete showing before this Commission as to the intentions of the Western Pacific Railroad Company, the ultimate

purchaser, towards this property, I would be unwilling to recommend that this Commission lend its sanction to the figure of \$35,100 as a basis of sale were it to be abandoned forthwith as an operative railway enterprise and were the bondholders not otherwise protected. While the final disposition of the property must be determined on the state of facts which may exist, I am mindful that the purchase figures looks to this property as a going concern rather than to the scrap value of its various parts. It is proper, therefore, that the purchaser assume all of the obligations of service which now rest upon this enterprise. The order will so provide.

I, therefore, recommend that the application be granted and submit the following form of order.

O R D E R.

C.L. Hovey, receiver of Boca and Loyalton Railroad Company, having applied to this Commission for authority to transfer to A.R. Baldwin for the sum of \$35,100 the property owned by Boca and Loyalton Railroad Company,

And a hearing having been held and it appearing to the Commission for the reasons stated in the foregoing opinion that this application should be granted,

IT IS HEREBY ORDERED that C.L. Hovey, receiver of Boca and Loyalton Railroad Company be given authority and hereby is given authority to transfer and deliver to A.R. Baldwin for the sum of \$35,100 all the property of Boca and Loyalton Railroad Company.

The authority herein granted is granted upon the following conditions, and not otherwise:

- 1.- Within twenty days after the transfer herein authorized, applicant shall report the same to this Commission;
- 2.- Within twenty days after the transfer herein

authorized, applicant shall file a copy of the deed and conveyance, including a description of the property transferred.

- 3.- A.R. Baldwin shall agree to assume and shall assume all of the obligations of service which may attach to the Boca and Loyalton Railroad Company or to the receiver of said company in connection with the operations of the Boca and Loyalton Railroad Company.
- 4.- The authority herein granted shall apply only to such transfer as may be effected on or before November 20, 1916.

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  
23rd day of October, 1916.

Hubert A. Baldwin  
W. H. Gordon  
Edwin O. Edgerton  
Frank R. Davis

Commissioners.