

ORIGINAL

Decision No. 6201.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

W. Elliott Judge,
Complainant.

vs.

County of Contra Costa and the
Oakland, Antioch and Eastern
Railway,

Defendants.

Case No. 1287.

Cowell-Portland Cement Company,

Complainant.

vs.

County of Contra Costa and the
Oakland, Antioch and Eastern
Railway,

Defendants.

Case No. 1291.

W. Elliott Judge in propria persona.

R. B. Mitchell for Cowell-Portland
Cement Company.

L. F. Tormey for County of Contra Costa.

Jesse E. Steinhart for Oakland, Antioch
& Eastern Railway.

Martin and Loveland, Commissioners.

O P I N I O N

In connection with the state-wide grade crossing survey of the engineering department of this Commission, Report No. 131, covering the crossings on the Oakland, Antioch and Eastern Railway between Walnut Creek and Concord, Contra Costa County, was forwarded to the Supervisors of Contra Costa County in January, 1917. In

this report the engineering department of the Commission recommended that, as soon as the proposed concrete highway was constructed along the west side of the railroad from the vicinity of Concord Cemetery north toward Concord, the crossing of the macadamized county road at Concord Cemetery be abandoned by the county and closed to public travel. At the time this report was made the county road crossed the railroad at this point and recrossed the railroad about one-half of a mile further north near the junction with the road to Cowell. On October 21, 1918, the Board of Supervisors of Contra Costa County, after the receipt of numerous requests from the Oakland, Antioch and Eastern Railway and numerous inquiries from the engineering department of this Commission, passed an order declaring the crossing closed and authorized the Oakland, Antioch and Eastern Railway to construct fences across the roadway at the right of way lines of the railroad.

The closing of the crossing must have been completed shortly after this date, as on November 26, 1918, an informal complaint (No. 15359) against the closing of the crossing was filed by W. Elliott Judge of 24 California Street, San Francisco, who owns a ranch adjacent to the new county highway and the abandoned crossing, the ranch being divided into two parts by the right of way of the railroad company. In answer to this informal complaint the railroad company offered no objections to the opening of a private crossing with gates, at this point, in place of the abandoned crossing. In this state, a large majority of the ranches which lie on two sides of the railroad right of way are equipped with this type of crossing. However, this construction was unsatisfactory to Mr. Judge, and, on January 9, 1919, a formal complaint was filed by him and assigned as Case No. 1287. On January 27, the Cowell-Portland Cement Company also filed a formal complaint against the closing of this crossing. This complaint was assigned as Case No. 1291.

The proceedings in these two cases were combined and a public hearing was held on Friday, February 28, at Martinez, at which all interested parties were represented.

In his formal complaint Mr. Judge alleges that the closing of this crossing has divided his ranch into two portions; that he is unable to reach one portion of the ranch from the other without going one-half of a mile north to the crossing near the junction with the road to Cowell and then back one-half of a mile along the new concrete highway, parallel to the old road, but on the opposite side of the railroad right of way to the westerly portion of his ranch and vice versa.

In his formal complaint Mr. Judge claims that he is denied access not only to the new concrete highway but also to any county road. He also claims that he is now denied the privilege of rural free delivery of mail, because the carrier refuses to climb the fences at the former crossing. Likewise, he also claims that Concord tradespeople refuse to deliver goods for the same reason, and that friends and others cannot visit the ranch without much inconvenience and trespassing on private property.

Mr. Judge also submitted, in evidence, a letter written to him by the County Surveyor of Contra Costa County, in which it is stated that the county intended to abandon the crossing in question at the cemetery and also the crossing one-half of a mile further north, near the junction of the old county road with the road to Cowell. He also read resolutions passed by the Chamber of Commerce of Concord, condemning the closing of the crossings and petitioning this Commission to allow them to remain open. These resolutions were passed by the Chamber of Commerce, after the above-mentioned letter was brought to their attention by Mr. Judge.

The complaint of the Cowell-Portland Cement Company covers the same crossing at the cemetery. The Cowell Company claims

that the closing of this crossing has closed to the complainant, its employees and the people of the Town of Cowell an easy method of reaching the road to the Town of Cowell. They claim that it is contemplated, in case this crossing is re-opened, that a road be built from the crossing easterly along the northerly fence line of the Judge property to a junction with the present Cowell road.

At the hearing, the evidence introduced showed that the county has no intention of fencing or closing the crossing near the junction with the present road to Cowell, although it has been abandoned. Such being the case, this crossing will be more convenient to the Cowell people than the crossing they desire re-opened. It was also stated that the proposed road above-mentioned was merely proposed and would probably not be built if the crossing at the junction remained open to travel. The complaint of the Cowell people is thus definitely settled and shows no necessity for re-opening the crossing at the cemetery, for their convenience.

F. C. Gilando, owning land on the east side of the railroad between these two crossings, withdrew his objections to the closing of the crossing at the cemetery, when he learned that the crossing one-half of a mile north was to remain open and that he would be allowed a private crossing with gates, from his land to the new county highway, by the railroad. This crossing is of the same type as that offered originally to Mr. Judge by the Oakland, Antioch and Eastern Railway.

Further study of the evidence shows that Mr. Judge will still have an open road as an outlet to Concord; that the closing of the crossing at the cemetery will not greatly inconvenience him, or the people living on his ranch, provided that the crossing is equipped with gates similar to those of other ranches.

The closing of the crossing will not interfere with the delivery of mail or merchandise to Mr. Judge's ranch, providing that

to place a letter box and merchandise box on the new highway. These boxes can be reached from the house by placing a three-foot picket gate in each railway right of way fence, in addition to the regular farm gates.

The evidence further shows that the closing of this crossing will not be an inconvenience to the general public, as practically all public travel has been removed therefrom and routed over the new concrete highway. The closing of the crossing is clearly in the interest of public safety.

It has been the policy of this Commission in the past to refuse to grant permission to construct new grade crossings unless public necessity demanded such crossings, and it has been its policy to discontinue the use of such crossings as are no longer needed by the traveling public. Often, in such cases, a few people are inconvenienced, but this is true in practically every public improvement where the convenience of the few is sacrificed for the welfare of the many.

A case very similar to this occurred at Ohmer (Decision No. 6033), not far from Concord, on this same railway. Here the old county road, which crossed the railway twice, was abandoned in favor of the new concrete highway with no crossings, and under application from the county, this Commission, after a public hearing, ordered both public crossings converted into private crossings with gates.

In view of the foregoing, we recommend the following form of order:

ORDER

W. ELLIOTT JUDGE and COWELL-PORTLAND CEMENT COMPANY having complained to the Commission concerning the closing of the public crossing on the old county road, over the tracks of the Oakland,

Oakland and Eastern Railway, near the Concord Cemetery; a public hearing having been held at which all interested parties were represented and the Commission having been fully apprised in the premises;

IT IS HEREBY ORDERED, (1) That the Oakland, Antioch and Eastern Railway and the County of Contra Costa be and the same are hereby granted permission to close the crossing above-mentioned to public travel, but that the same be equipped as a private crossing with farm gates, for the use of W. Elliott Judge, and, in addition, said crossing shall be equipped with two picket or other gates about three feet wide, well hung, for the use of pedestrians desiring to reach the Judge ranch house from the new county highway at this point.

(2) The expense of installing the necessary fences and gates shall be borne by the Oakland, Antioch and Eastern Railway.

(3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper.

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 17th day of March, 1919.

Edwin O. Edgerton
W. H. V. Vail
Frank R. DeLoe
H. K. Brundage
Irving Martin

Commissioners.