

ORIGINAL

J. S. MORFITT,
for himself and all others
similarly situated,

Complainants.

vs

Case No. 389

NEVADA-CALIFORNIA-OREGON RAILWAY,

Defendant.

APPEARANCES

H. V. Meloy, for Complainants,
James Glynn, for Defendants.

EDGERTON, Commissioner:

O P I N I O N.

This is a complaint against the service of the Nevada-California-Oregon Railway at its station called Pine Creek, California.

During the year 1911, this carrier extended its line from Davis Creek to Lakeview, Oregon, and opened the extension for operation about January 10, 1912. At a point about two hundred feet south of the California-Oregon State line the carrier erected a station building and installed an agent and gave to this station the name of Pine Creek, California.

It is admitted by the carrier that the purpose for which the agency station was established was to serve the residents of New Pine Creek, Oregon, an incorporated town adjoining the California-Oregon State line, about 7850 feet east of the station and persons living within California across the State line from New Pine Creek, Oregon, but actually within its physical limits.

On November 25, 1912, the agent was removed from the Pine Creek Station to a station approximately half a mile to the south, called Fairport, at which point the Agent has since

been maintained and Pine Creek has been operated as a "prepay station". Shortly after the agent was installed at the Pine Creek Station, the road leading therefrom to the town of New Pine Creek, Oregon, hereinafter called the "State Line Road", was gravelled and put in condition, so that it could be used at all times of the year, at quite an expense to the residents of New Pine Creek. This road, it is alleged, has been rendered practically useless by the removal of the agent to Fairport, as the travel between New Pine Creek and Fairport is by another road paralleling the State Line Road for a greater part of the way, located about half a mile to the south of it, and as travel over the State Line Road for other purposes than to reach the Pine Creek Station is immaterial and practically nil. It is also alleged that the road between Fairport and New Pine Creek is impassible in winter and is traversed by gullies and ditches making travel thereover difficult at all times.

It appears that it costs practically \$1.00 per ton more to haul freight between New Pine Creek and the Fairport station than between New Pine Creek and the Pine Creek station and it is alleged that for this reason material detriment and inconvenience have resulted to the residents of New Pine Creek and vicinity by the removal of the agent from Pine Creek Station and that the present service of the carrier at Pine Creek Station is ^{and} inadequate and unreasonable, /the Commission is asked to order the defendant to restore the agent and re-establish the service maintained at Pine Creek Station prior to the removal of the agent therefrom. It is further contended that the transfer of the agent to Fairport was for the purpose of promoting the private interests of the Fairport Town and Land Company regardless of and to the injury of the interest of the public, and it is admitted that the President, Vice President, Secretary - Treasurer of the Fairport Town and Land Company are respectively the Vice President, General Manager, Land Commissioner and Live Stock Agent of the defendant carrier. It is also claimed that the

removal of the Agent to Fairport was in direct violation of General Order No. 30 of this Commission, providing, among other things, that, - "No railroad corporation shall **** abandon an agency at any depot*****without first having made application to and received the consent of this Commission", but the facts do not sustain this contention as General Order No. 30 was not effective until December 1, 1912, or several days after the transfer of the Agent had been made.

The defendant justifies its removal of the agency to Fairport on the grounds that the site at Pine Creek was unsuited for a station, being low and swampy in the winter and the proximity to the state line made it undesirable as it might in time lead to confusion and annoyance if a town grew up immediately around the station and also that the depot site at Fairport is higher and that the road leading therefrom to New Pine Creek is capable of being made a better road and is but 2000 feet longer than the road leading from the Pine Creek Station and is also the direct route to the High Grade Mines, for which a few consignments have been received at Fairport.

At the hearing, the defendant, to dispose of this complaint, offered to pick up and deliver freight and passengers in New Pine Creek at the same rate or charge as was made for draying freight and transporting passengers between New Pine Creek and the Pine Creek Station before the agency was removed to Fairport, but the complainants, after considering the proposition, were unwilling to accept it and withdraw the complaint.

The question presented seems to be whether the public would be better served by maintaining an Agent at Pine Creek Station than by maintaining an Agent at Fairport. It is immaterial if certain expenditures were made upon the road leading from Pine Creek Station to New Pine Creek if it is found that the public is better, or at least as well served by having the agency maintained at Fairport.

The defendant has agreed to adequately fix the road leading from the Fairport Station to New Pine Creek, that is

by filling the gullies and ditches traversing it and putting ^{it} ~~it~~ ^{should} in such shape that it can be used throughout the year, and this ~~should~~ ^{settle} the dispute as to the quality and condition of the Fairport road as compared with the State Line Road, and if the defendant also takes care of the difference in the cost of transporting freight and passengers between New Pine Creek and Fairport, which it can easily accomplish by reducing its rates to Fairport by that amount, I do not see how it can be claimed that the change is detrimental and injurious to the residents of New Pine Creek and vicinity, particularly in view of the fact that the distance traversed between New Pine Creek and Fairport is but approximately 2000 feet greater than the distance between New Pine Creek and the Pine Creek Station.

No doubt the Fairport Town and Land Company will benefit by the location of the station agent at Fairport, adjacent to its hotel, but it could have secured the same benefit by building the hotel adjacent to the Pine Creek Station, at which place it also owns property, and as long as the benefit thus secured is not at the expense of the public and does not result in public inconvenience or detriment it should not influence the determination of the question here involved and it does not appear from the record that the officials of the Fairport Town and Land Company have in their semi-public capacity as officials of the Nevada-California-Oregon Railway, promoted their own private interests to the detriment of the public service.

From a consideration of all of the facts in this matter, I am of the opinion that the people of New Pine Creek and the vicinity, will be adequately and reasonably served through the station at Fairport when the road leading to Fairport is put in proper shape and the arrangements perfected for taking care of the additional cost of draying freight and transporting passengers between New Pine Creek and Fairport, which should be done at once, and that the carrier should be given an opportunity to so

adjust the matter, and I therefore recommend that the complaint be dismissed. In view of these conclusions I am also of the opinion that the carrier should be permitted when the Fairport road is put in proper condition and the arrangement for taking care of the additional cost of hauling thereto has been perfected, to discontinue entirely any service which it may be giving at the prepay station of ~~near~~ Pine Creek if it sees fit to make an application to do so, for the reason that it is obviously uneconomic to maintain two stations in such close proximity, and where the necessities of the public are not such as to require two stations, such as is the case here.

I therefore recommend the following form of order,

O R D E R

J. S. Moffitt, for himself and others similarly situated, having filed complaint against the Nevada-California-Oregon Railway and a hearing having been held and the Commission being fully apprised in the premises,

IT IS HEREBY ORDERED that the said complaint be and the same is hereby dismissed.

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 3rd day of July, 1913.

W. H. [Signature]

[Signature]

Edwin O. Edgerston