

Decision No. 7/8/.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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Spring Valley Water Company  
Complainant,  
vs.  
The Western Pacific Railroad Company  
Defendant.

ORIGINAL

Case No. 1529.

McCutchen, Willard, Mannon & Greene, by  
J. M. Mannon, for Complainant.

James S. Moore, Jr., for Defendant.

MARTIN, Commissioner:

O P I N I O N

In this proceeding Spring Valley Water Company, a corporation, alleges that Western Pacific Railroad Company has been negligently maintaining its railroad and right of way where it is crossed at Sunol, County of Alameda, by the County Road between Niles and Pleasanton in a condition unsafe and dangerous to persons using this road and to animals and vehicles on the road.

It is further alleged that no adequate warning device is installed at this crossing, that no cattle guards are installed and that cars are spotted between defendant's station at Sunol and the crossing, thus cutting off the view from the road with trains approaching on the track.

In its answer defendant denied the allegations and asked for dismissal of the complaint.

A public hearing was held at Sunol on June 13, 1921, at

which both complainant and defendant appeared.

Testimony was given by eleven witnesses for complainant, all being residents of, or employed in, the vicinity of Sunol.

Summarized, the testimony and opinion of these witnesses were that the warning bell maintained by the defendant at the crossing was inadequate. Several testified that the bell did not always ring and that at times did not ring until the train was within a very few feet of it, so that no warning was given travelers on the highway.

There was also a practical agreement in the testimony of these witnesses that the defendant allowed cars to stand on its side track so that they were frequently across the sidewalk and at times even into the roadway, and that this practice obscured the view of approaching trains.

Mr. Paul Woodward testified that he had been struck by a Western Pacific train at the crossing, but other witnesses were not able to testify that they had either seen or knew of other actual accidents at this location. Several, however, related near accidents, and while I do not care to take any position as to whether this accident, or these near accidents, were either a fault of the motorist or the railroad, I believe it is clear that there is some element of danger at this crossing.

Mr. Woodward also testified that 1260 automobiles passed over the crossing between noon and 6:30 P.M. on June 12, 1921, he having counted this number of machines.

Mr. A. W. Ebright, Assistant Superintendent for complainant at Sunol, while generally holding the views of other witnesses, was the only one to testify with regard to complainant's request that an order be entered to the effect that the railroad should install cattle guards at the north side of the crossing. Mr. Ebright testified that he realized that cattle guards in the station ground were dangerous

to the trainmen and that he did not recommend them. Later, the complainant withdrew that portion of this complaint in which it asks that cattle guards be installed.

Mr. C. L. Fike, Trainmaster of the Western Pacific, testified that trains in approaching the crossing, which is right near the station, whistle three times---for the station, for the crossing and for the train order board, the last, however, only during certain daylight hours. When asked if the house track could be connected at its west end and taken up east of the station, Mr. Fike stated that the portion suggested to be removed was that used as a team track and if removed the railroad would lose, through competition, practically all of its business at Sunol.

Upon cross-examination Mr. Fike admitted that an automatic flagman giving a visible signal in addition to an audible signal was better than a warning bell alone, and also that the station whistle was given about a mile away and could hardly be considered as a warning of the approach of the train at this crossing. Mr. Fike stated that the railroad traffic was two passenger trains and approximately two freight trains on the average, each way, per day, all of which moved substantially during daylight hours.

Mr. John Coles, Signal Engineer for defendant, testified that the track circuit controlling the operation of the crossing bell extended 1884 feet east of the crossing and 1576 feet west of the crossing. Mr. Coles stated that in his judgment, in view of the relatively light railroad traffic, the crossing was sufficiently protected and that he had no record of failures in the bell for the past two years.

Upon cross-examination, Mr. Coles admitted that the relay operating the bell was not modern, liable to failure, and that he would recommend that it be changed.

I am convinced from complainant's witnesses and Mr. Cole's statements, in spite of the fact that failures have not been reported, that the electrical installation which operates the bell is not satisfactory. Mr. Coles estimated it would cost \$550 to install an automatic flagman in lieu of the crossing bell.

Mr. H. G. Weeks, one of the Commission's Assistant Engineers, testified that this crossing had been inspected, during the course of the Commission's general grade crossing investigation, on August 17, 1916, and that in Grade Crossing Report No. 64, this crossing, referred to as Crossing No. 14, it was recommended that the Western Pacific install an automatic flagman in place of the crossing bell and that this recommendation had been sent to the Western Pacific. He also stated that in his judgment this recommendation was still good, and upon question, thought the expense of changing the crossing bell to an automatic flagman was justified, drawing attention to the fact that there was an increasing traffic on this road; that automobiles collected around the ice cream parlor near the crossing, and these, with cars spotted on the house track between the station and the crossing, obscured the view and confused the motorists on the highway.

Attorney for defendant asked several witnesses that if cars were not spotted nearer the crossing ~~nearer~~ than opposite the east passing track switch, if, in their opinion, a satisfactory view of the eastbound trains could be obtained. There was apparently no definite agreement between them. This question was also asked Mr. Weeks, but he reserved his reply until he had made an examination on the ground. He now reports that he believes this would be satisfactory, particularly since consideration should be given to the fact that some of this track room between the station and the crossing must be used as a ~~turn~~ track if the Western Pacific is to successfully continue doing a carload business at Sunol.

The Western Pacific offered to promulgate an order to trainmen to the effect that no cars should be spotted between the east passing tracks and the crossing, and in view of our engineer's opinion I believe that this will give sufficient view and at the same time allow the railroad to transact its carload business satisfactorily. I am also convinced that the crossing bell should be changed to an automatic flagman.

Complainant having agreed to withdraw that portion of its complaint asking for installation of cattle guards north of the crossing, this phase of the complaint needs no discussion.

I recommend the following form of order:

O R D E R


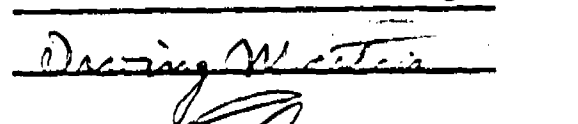

A public hearing having been held in the above entitled proceeding, the matter having been submitted and being now ready for decision,

IT IS HEREBY ORDERED, that Western Pacific Railroad Company be and the same is hereby ordered to install, within thirty (30) days, an automatic flagman of type approved by the Commission in lieu of its existing crossing bell at its crossing, at Sunol, on the County Road between Niles and Pleasanton, and

IT IS HEREBY FURTHER ORDERED, that the Western Pacific Railroad Company be and the same is hereby ordered not to allow cars to stand on its house track at Sunol station east of a point opposite the east switch in its passing track in Sunol.

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 27<sup>th</sup> day of June, 1921.

  
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Commissioners. 330