

Decision No. 27800

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
CITY OF OAKLAND, a municipal corpora-
tion, for an order requiring
SOUTHERN PACIFIC COMPANY to restore
service on its so-called Eighteenth
Street Line in the City of Oakland,
California.

Case No. 3908.

Walter W. Cooper and F. B. Fernhoff, for City of
Oakland.

E. J. Foulds, for Southern Pacific Company.

George E. Sheldon, for the Committee for the
Eighteenth Street car line restoration.

Harry See, for the Brotherhood of Railroad
Trainmen.

Harold D. Weber, for the Downtown Property Owners'
Association of Oakland.

Edwin G. Wilcox, for the Oakland Chamber of Commerce.

Fred C. Hutchinson, City Attorney, for the City of
Berkeley.

Harvey Blair, for the Acorn Club of Oakland.

John C. Stirrat, for Apartment House Owners'
Association.

WARE, COMMISSIONER:

O P I N I O N

In this case the City of Oakland, a municipal corpora-
tion, seeks an order of this Commission pursuant to Section 64 of
the Public Utilities Act "setting aside, rescinding and making
of no effect that portion of its opinion and order No. 25740 per-
mitting and authorizing Southern Pacific Company to discontinue
passenger service on its Eighteenth Street Line Operating along
Eighteenth, Twentieth, Twenty-first and Webster Streets, City of
Oakland, and for an order authorizing and requiring Southern

Pacific Company to resume passenger service on said line on a basis equivalent to that offered prior to the date of said decision and order No. 25740, and for such other and further order as may be meet and proper."(1)

The C. R. C. Order No. 25740, hereinabove referred to, was issued by this Commission on March 16, 1933, in determination of Applications C.R.C. Nos. 18640 and 18641 wherein this Commission took jurisdiction of Applications of Key System, Ltd., and Southern Pacific Company, and wherein both applicants asked of this Commission the authority and permission to discontinue and abandon certain passenger service affecting the electric inter-urban lines of the applicant companies in Alameda County, California. This Commission, having jurisdiction of each application with respect to abandonment of intrastate service, found from the record that economies of operation could be effected which would strengthen the earning position of each of the carriers and simultaneously promote efficient service to the body of their patrons without severe inconvenience to any. In the instant case the defendant, Southern Pacific Company, has filed its pleading wherein said defendant first, has protested the jurisdiction of this Commission to pass upon the merits of this case; and secondly, by way of answer controverts the complaint upon its merits.

The case was heard in Oakland on January 8, 1935, said hearing being confined to the jurisdictional question raised and all parties appearing submitted their arguments thereon. This jurisdictional question is now ready for decision.

Before concluding this jurisdictional question, this Commission should construe the complaint herein as being instituted pursuant to Section 36 of the Public Utilities Act and not pursuant to Section 64 thereof. It is doubtful if the relief sought could be granted by invoking Section 64 of the Public Utilities Act of

(1) Language quoted is from the prayer of complaint filed herein. (C.R.C. Case No. 3908)

the State of California. The theory of the within complaint is to accomplish the restoration of a transportation service, which has ceased to exist as the result of an abandonment already accomplished by compliance with a regulatory order already granted. In a proper case this Commission, pursuant to said Section 64, may "rescind, alter or amend any order or decision made by it." Such power, when invoked, should be exercised in limiting, altering or modifying an existing right or operation. It is doubtful if such power would avail this Commission to bring back into existence by an order of rescission any service previously abandoned and non-existent.

Assuming jurisdiction in this Commission to grant the relief sought, it follows that the appropriate remedy to be pursued is that which is set forth in Section 36 of the Public Utilities Act of the State of California, which provides:

"Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order." (Emphasis supplied)

In the proceedings at Oakland the defendant company offered the testimony of Frank L. Burckhalter, at present Vice President, and for many years General Manager of Southern Pacific Company, and Interstate Commerce Commission Finance Docket No. 10067, decided August 31, 1933, and marked Exhibit 1 herein.

From the foregoing the record discloses the following categorical and uncontroverted facts:

1. Defendant Southern Pacific Company is a general steam railroad system of transportation, operating both interstate and intrastate.

2. On August 31, 1933, the Interstate Commerce Commission, by their Finance Docket No. 10067, granted the Southern Pacific the right to abandon the operation of its so-called "Eighteenth Street line between the intersection of said line with the main line of the Southern Pacific Company at or near Sixteenth Street station and the intersection of Fourteenth and Webster Streets, about 3.231 miles, in Oakland."(2)

3. The service which was so permitted to be abandoned, consisted of a service "operated by the Southern Pacific Company, lessee, until March 26, 1933, as part of its general steam railroad system of transportation, being portions of the so-called East Bay Electric lines."(2)

4. During the operation of the Eighteenth Street line, almost all of its patrons consisted of urban and interurban intrastate passengers; probably no more than a small fraction of one per cent of its passengers were interstate.

5. The Interstate Commerce Commission found that the operation of the Eighteenth Street service involved herein "would impose a burden on interstate commerce."(2)

6. On the 26th day of March, 1933, the defendant Southern Pacific Company abandoned its electric interurban service on "Eighteenth Street Line operating along Eighteenth, Twentieth, Twenty-first and Webster Streets, between Sixteenth Street Station and Second and Webster Streets, City of Oakland."(3)

7. Ever since March 26, 1933, defendant Southern Pacific Company has discontinued and abandoned all service on said Eighteenth Street Line involved herein.

(2) Excerpt from I.C.C. Finance Docket No. 10067.

(3) Excerpt from Section III, Sub-section A in the order contained in C.R.C. Decision No. 25740.

8. On March 26, 1933, defendant Southern Pacific Company cancelled all passenger tariffs affecting service on the said Eighteenth Street Line.

9. Since March 26, 1933, defendant has removed the Broadway Street track and overhead wire crossings on the said Eighteenth Street Line in the City of Oakland, California; and also has dismantled and rendered inoperative certain protective devices on the crossings involved in said Eighteenth Street Line; said company continues to maintain certain steam train switching operations on the westerly end of said Eighteenth Street Line in connection with its general steam railroad system of transportation; all other physical facilities including tracks, wires and poles which comprised a part of the Eighteenth Street Line operation have been entered in the books of the defendant company to the account of material to be salvaged, the principal part of the investment having been written off to profit and loss.

In accurately determining this jurisdictional question, particular attention must be given to paragraphs 17 to 22 inclusive of Section I of the Interstate Commerce Act.

Paragraph 17, Section 1 of the I.C.A. provides:

"Directions of commission (Interstate Commerce Commission) as to car service; disobedience; rights of States. The directions of the commission (Interstate Commerce Commission) as to car service and to the matters referred to in paragraphs (15) and (16) may be made through and by such agents or agencies as the commission (Interstate Commerce Commission) shall designate and appoint for that purpose. It shall be the duty of all carriers by railroad subject to this chapter, and of their officers, agents, and employees, to obey strictly and conform promptly to such orders or directions of the commission (Interstate Commerce Commission) and in case of failure or refusal on the part of any carrier, receiver, or operating trustee to comply with any such order or direction such carrier, receiver, or trustee shall be liable to a penalty of not less than \$100 nor more than \$500 for each such offense and \$50 for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States: Provided, however, That nothing in this chapter shall impair or affect the right of a State, in the exercise of its police power,

to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the commission (Interstate Commerce Commission) made under the provisions of this chapter." (Emphasis and parentheses supplied.)

Paragraph 18, Section 1 of the I.C.A. provides:

"Extension or abandonment of lines; certificate required. No carrier by railroad subject to this chapter shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this chapter over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the commission (Interstate Commerce Commission) a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the commission (Interstate Commerce Commission) a certificate that the present or future public convenience and necessity permit of such abandonment." (Parentheses supplied.)

Paragraph 20, Section 1 of I.C.A. provides:

"Issuance of certificate by commission (Interstate Commerce Commission): unlawful extension or abandonment of lines. The commission (Interstate Commerce Commission) shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificates such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the commission, (Interstate Commerce Commission) any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than \$5,000 or by imprisonment for not more than three years, or both." (Emphasis and parentheses supplied)

Paragraph 21, Section 1 of the I.C.A. provides in part as follows:

"Power of commission (Interstate Commerce Commission) to require adequate facilities or extension of line; penalty. The commission (Interstate Commerce Commission) may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this chapter, party to such proceeding," * * * "to extend its line or lines: Provided, That no such authorization or order shall be made unless the commission (Interstate Commerce Commission) finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public." (Parentheses supplied)

Paragraph 22, Section 1 of the I.C.A. provides as follows:

"Construction, etc. of spurs, switches, etc., within State. The authority of the commission (Interstate Commerce Commission) conferred by paragraphs (18) to (21) both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one State, or of street, suburban or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation." (Emphasis and parenthesis supplied)

From an analysis of the foregoing, it appears patent:

1. There has been effectuated an abandonment of the electric interurban passenger service of the Southern Pacific Company on the Eighteenth Street line involved herein.
2. Pursuant to Section 36 of the Public Utilities Act, and in harmony with numerous Supreme Court decisions (4) the California Railroad Commission has the jurisdiction and right, upon a proper showing, to order the relief sought

(4) Railroad Commission vs. Southern Pacific Co., et al., 264 U.S. 338; Interstate Commerce Commission, Petitioner, vs. United States of America, etc., 280 U.S. 52; The A. T. & S. F. Ry. Co., et al. vs. Railroad Commission of California, 283 U.S. 380; Piedmont and Northern Ry. vs. Interstate Commerce Commission, 286 U.S. 299; United States of America vs. Chicago, North Shore and Milwaukee Railway Co., 288 U.S. 1.

herein in so far as such service is confined to intrastate traffic.

3. In dual jurisdiction of the foregoing and before any order of the California Railroad Commission can be made effective, which such order may have as its object the granting of the relief as outlined in the last preceding paragraph, the Interstate Commerce Commission has the right and jurisdiction, after a hearing upon its merits of a complaint similar to the one filed herein, to order the relief sought, first upon the grounds that such relief is "in the interest of public convenience and necessity" and secondly, upon the grounds that "the expense involved" in affording such relief "will not impair the ability of the carrier to perform its duty to the public." (Quotations are from Paragraph 21, Section 1, I.C.A., supra.)

The defendant company has cited numerous State and Federal decisions,⁽⁵⁾ none of which are identical to this case, or conflict with the conclusions hereinabove set forth.

ORDER

Public hearings having been held and arguments submitted in behalf of City of Oakland, a municipal corporation, and Southern Pacific Company on the question of the jurisdiction of the

(5) Venner vs. Michigan Central R. R. Co., 271 U.S. 127;
Lambert vs. Baltimore and Ohio R. R. Co., 258 U.S. 377;
People vs. Illinois Central R. R., 324 Ill. 591;
St. Louis vs. Blumberg, 325 Ill. 387;
The A. T. & S. F. Ry. Co. vs. C.R.C., 173 Cal. 577;
Interstate Commerce Commission vs. Oregon-Washington R.R.
& Nav. Co., 288 U.S. 14.
Village of Mantorville vs. Chicago Great Western R. R. Co.
Fed. Court, Minn., Fed. Supp. Adv. Sheets, Vol. 8, No. 10
at p. 791 (8 Fed. Supp. 791).

California Railroad Commission to grant the relief sought by the said City of Oakland,

The California Railroad Commission concludes that it has jurisdiction to pass upon the merits of the complaint filed herein; and upon a proper showing to grant the relief sought herein, subject to the order of the Interstate Commerce Commission authorizing the same, first upon the grounds that such relief is in the interest of public convenience and necessity and secondly upon the grounds that the expense involved in affording such relief will not impair the ability of the carrier to perform its duty to the public.

IT IS HEREBY ORDERED that the issues presented herein be set for hearing in the City Hall at Oakland, California, on the 3rd day of April, 1935, at 10 A.M. before Commissioner W. H. [Signature].

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 4th day of March, 1935.

[Signature]

[Signature]

[Signature]

[Signature]

Commissioners.