

ORIGINAL

Decision No. 36702

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own )  
motion into the operations of railroad )  
corporations to determine the )  
sufficiency of manpower available for )  
the efficient and safe operation of )  
their facilities. )

Case No. 4676

Additional Appearance

EUGENE MORTON, General Chairman, Switchmen's Union  
of North America.

BY THE COMMISSION:

THIRD INTERIM OPINION AND ORDER

By their supplemental application in this proceeding, filed October 8, 1943, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Union Pacific Railroad Company, and The Western Pacific Railroad Company seek a clarification, in certain respects, of the interim order contained in Decision No. 36457, rendered June 30, 1943, in the above-entitled proceeding or, in the alternative, a modification of that order. A public hearing was had before the Commission en banc on October 18, 1943, and before Examiner Austin on October 19, 1943, at San Francisco, when the taking of evidence, relating to this application, was concluded.

It is alleged that at certain terminals applicants, within the limits of such terminals, transfer from one switching yard to another switching yard groups of freight cars, known as "switch drags," which are propelled by switch engines manned by an engineer and fireman, and are in charge of a yard crew consisting of an engine foreman and not less than two helpers known as "yardmen" or switchmen. In the course of such movements from one yard to another, it is alleged, these switch drags frequently travel over applicants' main tracks. The movements are made pursuant to applicants' yard limit rules and not by authority of train orders. The Attorney General of

this State, so applicants assert, has ruled that, if such switch drags traverse the main line in moving from one yard to another, each is a train and, consequently, the California Full Crew Law applies to such operation.

A clarification of Decision No. 36467 is sought regarding its application to the switch drags described. Should the Commission determine that that decision does not authorize applicants, under any circumstances, to deviate from the provisions of subdivisions (e), (f), and (g) of section 6902, California Labor Code, as to such switch drags, applicants request that the order be modified to permit such deviation.

The ruling of the Attorney General, to which applicants have referred,<sup>(1)</sup> holds as we read it, that intra-yard movements of trains over a main line track are subject to the provisions of the Full Crew Law. There the switching movement was performed over a main line track between points situated wholly within the yard limits at Fresno; in other words it was an intra-yard movement. In its administration of the Full Crew Law the Commission has accepted as controlling and has consistently adhered to this opinion.

From the evidence submitted at the hearing, it appears that switch drags move over main line tracks between adjoining and contiguous yards located within the switching limits at Los Angeles and Oakland. Such an operation, in our judgment, would fall within the scope of the Attorney General's ruling and consequently, it would be subject to the provisions of section 6902. Decision No. 36467 permits, under the conditions set forth therein, deviations from the provisions of subdivisions (e), (f), and (g) of that section. Under the circumstances therefore no modification of our previous decision is necessary.

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(1) Opinions of California Attorney General, No. 5726, dated August 9, 1926.

Accordingly the application will be dismissed.

ORDER

The Commission having considered the evidence presented in this proceeding upon the application of The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Union Pacific Railroad Company, and The Western Pacific Railroad Company for clarification or modification of Decision No. 36467 heretofore rendered herein; and good cause appearing:

IT IS ORDERED that said application for clarification and modification of Decision No. 36467 be and it hereby is dismissed.

This order shall become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 9<sup>th</sup> day of November, 1943.

Francis A. Havenner  
H. B. Baker  
Justus F. Craven  
Richard Kachel  
Thomas D. O'Connell  
COMMISSIONERS