

ORIGINAL

Decision No. 40942

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation upon the
 Commission's own motion to determine if
 public safety will be promoted, maintained,
 or impaired by the removal of any or all
 existing main line derails within the limits
 of the interlocking plant at Elvas, Sacramento
 County, on the lines of the Southern Pacific
 Company.

Case No. 4897

R. E. WEDEKIND and E. L. VAN BELLEN for Southern Pacific Company.

JOHN E. HENNESSY for Western Pacific Railroad Company.

F. G. PELLETT for Brotherhood of Railroad Trainmen.

W. W. STEVENS for Brotherhood of Locomotive Engineers and for Brotherhood of Firemen and Enginemen.

C. E. GOBLE for Order of Railway Conductors.

O P I N I O N

On April 29, 1946, the Southern Pacific Company, a carrier engaged in interstate commerce, filed with the Interstate Commerce Commission its application for authority to rearrange its interlocking system at Elvas, California. A copy of this application, together with blueprints showing the proposed changes, was contemporaneously filed with this Commission. The plan involved the installation of selective switch control of signals over switches for the various routes converging at Elvas, and the removal of ten main line derails presently in place.

The Commission then instituted this inquiry to determine whether such derails should be removed, although the Interstate Commerce Commission had by order issued July 11, 1946, granted authority to Southern Pacific Company to make the requested changes in the interlocking system, including the removal of the derails.

On July 14, 1947, the Southern Pacific Company filed a motion to dismiss said investigation on the ground that this Commission has no jurisdiction to make any order concerning the subject of said investigation. A hearing in the matter was held on August 22, 1947, when the Southern Pacific Company duly reserved its rights upon its motion to dismiss, and evidence upon the merits of the proposed plan was received with the understanding that said motion had not been waived.

The Interstate Commerce Act, as amended in 1937 (49 U.S.C.A. Sec. 26(b)), empowers the Interstate Commerce Commission to "order any carrier . . . to install the block signal system, interlocking, automatic train stop, train control, and/or cab signal devices, and/or other similar appliances, methods, and systems intended to promote the safety of railroad operation . . . Provided, That block signal systems, interlocking, automatic train stop, train control, and cab signal devices in use on August 26, 1937, or such systems or devices hereinafter installed may not be discontinued or materially modified by carriers without the approval of the Commission . . ." The statute further requires carriers to file with the Commission their rules for the installation and maintenance of such systems for approval by the Commission, authorizes the Commission to inspect such systems, and prohibits the use by carriers of any such system that has not been so inspected and that does not meet the requirements of the Commission.

In implementing the foregoing statute, the Interstate Commerce Commission has promulgated, by order effective September 1, 1939, a set of "Rules, Standards, and Instructions For Installation, Inspection, Maintenance, and Repair of Automatic Block Signal Systems, Interlocking, Centralized Traffic Control Systems, Automatic Train Stop and Train Control Systems, Automatic Cab Signal Systems Continuously Controlled (Without Automatic Train Stop or Train Control), Dragging Equipment and Slide Detectors and Other Protective Devices, Other Similar Appliances, Methods, and Systems." That Commission has since entertained and acted upon numerous applications filed by rail carriers for the approval of plans relating to interlocking plant alterations, including a number of proposals for complete or partial removal of derail devices. (241 I.C.C. 190; 243 I.C.C. 586; 243 I.C.C. 798; 246 I.C.C. 698.)

The Supreme Court of the United States has held that where Congress, acting under the commerce clause of the Constitution of the United States, has occupied the field of regulation of a particular subject of interstate commerce, such regulation becomes exclusive and state action touching the same subject matter is precluded. (Napier v. Atlantic Coast Line R. Co., 272 U.S. 605; 71 L. Ed. 432.)

It readily appears, therefore, that the Southern Pacific Company has heretofore applied to the Interstate Commerce Commission and has obtained from that Commission full authority to make certain alterations in its Elvas interlocking system, including the removing of the existing details, and that such authorization given by the Interstate Commerce Commission in the exercise of the powers granted under the Act of Congress precludes this Commission from making any contrary order. Upon consideration of the foregoing facts and questions of law raised by the motion to dismiss, the Commission concludes that the investigation herein should be dismissed.

ORDER

The above entitled matter having been heard and fully considered by the Commission, IT IS HEREBY ORDERED that the investigation herein be and hereby is dismissed.

Dated at San Francisco, California, this 19th day of November, 1947.

Harold P. Kula

Jack Russell

R. J. [Signature]

Commissioners.