

Decision No. 41782

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN DIEGO ELECTRIC RAILWAY COMPANY, a corporation, for the installation of "Exempt Signs" at railroad crossing tracks located at First Street and Orange Avenue and at the U. S. Navy Amphibious Training Base in the City of Coronado, California, in accordance with Section 576 of the California Vehicle Code and Rule No. 2.214 of General Order No. 93-A of the Public Utilities Commission of the State of California.

) Application No. 28799

FORREST A. COBB, for applicant; WM. F. BROOKS, for The Atchison, Topeka and Santa Fe Railway Company, Santa Fe Transportation Company, and Union Pacific Railroad Company, protestants; and H. P. MACK, for San Diego & Arizona Eastern Railway and Southern Pacific Company, protestants.

OPINION AND ORDER

By the above numbered application San Diego Electric Railway Company seeks an order authorizing the installation of "exempt signs" at two grade crossings of the San Diego and Arizona Eastern Railway Company in the vicinity of Coronado, San Diego County. Public hearing in this matter was held in San Diego on April 22, 1948, at which time it was submitted with the understanding that protestants would be given ten days to file a memorandum in reply to the memorandum submitted by applicant at the hearing, following which applicant would be given five days within which to reply. By its letter of April 29, 1948, counsel for San Diego and Arizona Eastern Railway Company and Southern Pacific Company indicated that they had no desire to file such a memorandum. A similar letter from counsel for The Atchison, Topeka and Santa Fe Railway Company, dated April 30, has been received.

The rail line involved is known as the Coronado branch of the San Diego and Arizona Eastern Railway Company and has as its termini Twelfth Street, National City, (the junction with the main line of this railroad), on the one hand, and North Island, U. S. Naval Air Station, on the other hand. The total length of the branch is approximately 16.5 miles. The line is not suitable for high speed operation and trains are restricted to a speed of 15 miles per hour between a point near National City and a spur track serving the Hotel Del Coronado, and a speed of 12 miles per

hour between that spur and North Island. Freight service only is operated over this single-track line. At present there are but two round trips weekly, on Tuesdays and Thursdays, ⁽¹⁾ although at one time during the recent war operation was daily except Sunday. Future operation will depend upon the amount of traffic that may develop, particularly for the Navy. The line serves approximately fifteen industries between the junction with the main line at National City and the terminus of the branch line at North Island. ⁽²⁾

Applicant, in connection with its public transportation service in the San Diego area, operates a bus line originating in San Diego, thence across the San Diego Bay via the San Diego and Coronado Ferry to Coronado and the Amphibious Training Base located on the Silver Strand some distance to the south. The record shows that service on this line is provided on a 10-minute headway during the morning peak, a 12-minute headway during the base period and a 6-minute frequency during the afternoon peak, and that some service is operated during 22 hours of each day.

The First Street crossing (Crossing No. 36C-16.0) is located a short distance from the point where vehicles leave the ferry after arriving on the Coronado side of the bay, and a witness for the applicant testified that the coaches are invariably the second or third vehicle to leave the ferry. Because of the proximity of the rail line in question and the necessity for stopping the coaches prior to crossing the line, other vehicles aboard the ferry are required to wait until the coaches have stopped and proceeded before leaving the ferry. Because of a slight grade, at this crossing trains operate at a speed of approximately five or six miles per hour.

(1) These trains start at approximately 8:45 a.m., arrive at North Island between 11 and 12 o'clock, are on North Island approximately 30 minutes, and begin the return trip between 12:30 p.m. and 1:30 p.m.

(2) The following industries are served by spur tracks or industry tracks:

Paulsen & Nardon, Plant No. 2; U.S. Naval Repair Base, Gate No. 13; W. J. Bush Citrus Products Corporation; Hoskings Packing Plant; Potash spur; Perlite Corporation of America; Pioneer Pyrophyllite; Palomar Lumber Co.; Rohr Aircraft; Richfield Oil Station; Western Salt Company; Westvaco Company; U.S. Naval Reservation, Fort Emory; Amphibious Repair Base, Tent City Siding; Hotel Del Coronado, Oil Spur; and U.S. Naval Air Station, North Island.

There are 1,262 motor coach crossings per week over the First Street crossing and 621 crossings per week over the unnumbered crossing at the Amphibious Training Base. A passenger count for the week ending April 18, 1948, showed 26,269 passengers aboard the coaches crossing at First Street and it is estimated that 2,500 passengers per week are aboard the coaches crossing at the Amphibious Training Base. It is applicant's contention that more hazard is created by requiring the coaches to make the stops at the crossings involved than would be the case if they were allowed to proceed, and argues that this is particularly true in view of the volume of rail traffic using the line in question.

Section 576 (d) of the Vehicle Code of the State of California reads as follows:

"The driver of any motor vehicle carrying passengers for hire need not stop, unless a railway train is approaching at any spur or industrial track, where, with the approval of the Public Utilities Commission, distinctive signs are displayed indicating that no stop need be made."

Protestants contend that the railroad line in question is not a "spur or industrial track." but is the main track of a branch line, and that therefore the Commission is without jurisdiction to grant the relief sought by applicant. The line is carried on the records of San Diego & Arizona Eastern Railway Company as the main track of its Coronado Branch, and is so reported to the Commission. A witness for protestant testified as follows:

"* * * a spur track is usually designated as a track having only one switch connection with the main track or a sub-track or with another spur track.

Q. What about an industrial track? A. An industrial track is a track which serves an industry and it can be either a spur track with one switch connection or it can be a track with a switch connection at either end, but it is used entirely for serving an industry."

Applicant contends that Vehicle Code section 576(d) is concerned with the safety of passengers in common carrier motor buses, the legislative intent being to enable the Commission to authorize "exempt signs" at crossings where railroad movements are slow and infrequent. It is urged that the words "spur or industrial track" should be construed within the meaning and purposes of that section rather than in other connections and for other purposes. Applicant takes the position

that the legislative intent was that if railroad movements are slow and infrequent the Commission should have jurisdiction to grant exemptions, and that the mere length of the particular track, or its designation for other purposes, has nothing to do with the objects of this particular code section. Applicant concedes that the Commission lacks jurisdiction to grant exemptions on what is ordinarily termed a main line.

Vehicle Code section 576(d) was formerly a part of section 135 of the California Vehicle Act. The latter section became effective in 1931, and in 1932 the Commission adopted regulations in connection with the establishment of "exempt" signs at "spur track" crossings. (3) On the same day, in considering applications for the installation of "exempt" signs, and in Re Motor Carriers Ass'n., 37 C.R.C. 354, at 355, the Commission stated in part as follows:

"A considerable number of the grade crossings included in these applications involve other than spur tracks. For the purpose of these proceedings, a spur track is considered as one with single connection to a main, branch, or other track, and usually is a short industrial track diverting from a main track. All crossings applied for which involve a track connecting with a main or other operating track at more than one point will be automatically eliminated since they do not come within the scope for consideration."

Section 1(22) of the Interstate Commerce Act provides that the jurisdiction of the Interstate Commerce Commission does not extend to the construction or abandonment of spur, industrial, team, switching, or side tracks located wholly in one State. In Re Iberia & V. R. Co., 111 I.C.C. 660, it was held that a railroad line twelve miles long is not a spur as defined by the above section, but a branch for acquisition of which authority was necessary. It was also noted that the typical spur track or siding ordinarily does not exceed a few hundred feet in length.

In matters arising under other sections of the federal statute, it has been held that "industry tracks" are those which connect a carrier with an industry and are used exclusively or preferentially for that industry. (4) When a carrier does not have an unrestricted right to the use of a track serving an industrial plant, it is classified as an "industry track." (5)

(3) The words "spur track," appearing in the statute, became "spur track or industrial track" in 1941, and "spur or industrial track" in 1947.

(4) Re Texas Midland R., 75 I.C.C. 1, 121; Re Bauxite & N. Ry. Co., 121 I.C.C. 474; Re St. Paul Bridge & Term. Ry. Co., 143 I.C.C. 375; Re Muncie & W. R. Co., 106 I.C.C. 318.

(5) Re Bauxite & N. Ry. Co., 121 I.C.C. 474.

The track here in question is not a "spur or industrial track", as that term is generally understood in railroad parlance, and it must be assumed that the Legislature used that term advisedly. We are not prepared to say that the Legislature intended that phrase to include branch lines of railroads.

It may well be that it would be safer to eliminate the necessity of stopping 1,262 motor coaches weekly at relatively unimportant grade crossings. However, under the code section exemptions may be authorized only at "spur or industrial" tracks, and we are therefore compelled to subscribe to protestants' position that the Commission is without jurisdiction to grant the relief sought by applicant.

IT IS THEREFORE ORDERED that Application No. 28799 is hereby dismissed for lack of jurisdiction.

The effective date of this order shall be twenty days from the date hereof.

Dated at San Francisco, California, this 29th day of

June, 1948.

R. J. Anderson
Justice J. Quinn
Earl Powell
Harold Kula
Kenneth Potter
 Commissioners