GEH

ORIGINAL

Decision No. 49884

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITY OF FRESNO, a municipal corporation, and COUNTY OF FRESNO, a political subdivision, Complainants, vs. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation, and SOUTHERN PACIFIC COMPANY, a corporation, Defendants.	Case No. 5467

OPINION AND ORDER DENYING REHEARING

City of Fresno and County of Fresno, complainants herein, have filed their petition for rehearing respecting Decision No. 49682, rendered herein by the Commission on February 16, 1954 pursuant to a motion to dismiss interposed by defendants.

By said decision, the Commission held that the public interest required that the complainants seek the necessary Federal authority to carry out the consolidation plan involving the defendants in the City of Fresno as a condition precedent to this Commission proceeding further in the matter. In said decision, the Commission found that it had certain jurisdiction of the subject matter of the complaint herein and also held that the Interstate Commerce Commission had certain jurisdiction of said subject matter. Necessarily, the decision of the Commission was of an interlocutory nature which held further action in the above-entitled case in abeyance pending appropriate proceedings before the Interstate Commerce Commission.

The complainants, in their petition for rehearing, contend that

it was error for this Commission to so hold and render its interlocutory decision herein. Complainants take the position that it is the lawful duty of this Commission to proceed first in the matter and hear the case upon its merits.

We have given careful consideration to the contentions made by the complainants in their petition for rehearing but find no merit therein.

The complainants have not exhausted their administrative remedies before the Interstate Commerce Commission and we reassert that they are required to do so as a condition precedent to this Commission proceeding further in the matter.

The implied contention made by the petitioners that this railroad consolidation plan in the City of Fresno is of a local nature is not supported by the law or the facts. There is nothing local about the relocation of an interstate railroad track, the abandonment or extension of such track, or the joint use of such track or interstate facilities connected therewith. These are all matters of national concern which the Congress has proclaimed by national legislation as being national policy. Before this consolidation plan may be realized, the authority of the Interstate Commerce Commission must be secured for the abandonment, relocation and extension of certain interstate rail lines and the authority for the joint use of an interstate rail line and facilities connected therewith. This jurisdiction is national in character and it would make no difference whether the rail facilities in question were located in California or in the District of Columbia so far as the duty of the Interstate Commerce Commission may be to exercise that jurisdiction.

Therefore, it is obvious that the Federal authority is paramount in this case and the securing of such authority is a sine qua non to the exercise by State authority of its jurisdiction in this case,

that is, if such exercise be productive of results. In other words, the Federal authority holds an absolute veto over the consolidation plan as envisioned by the complaint of the complainants.

It is sophistry for the complainants to contend that this consolidation plan may be disposed of piecemeal and that, for the purpose of the exercise of State authority, the grade crossing elimination part of this plan should be handled as a distinct and separate matter. The complainants are bound by their theory of the case. What they are asking for is authority to carry out a consolidation plan and not merely grade crossing relief. This Commission will not proceed in this case piecemeal.

A review of the legal history of the Los Angeles Union Terminal case reveals that an appropriate proceeding was instituted before the Interstate Commerce Commission by the City of Los Angeles and others to secure the necessary Federal authority for the abandonment, extension and relocation of interstate rail lines and the joint use of facilities in order to make it possible to construct in that city a union terminal. This proceeding was taken before any lawful decision of this Commission (then the California Railroad Commission) had been rendered ordering the construction of such a terminal. The first decision of this Commission (rendered on rehearing) ordering such construction was annulled by the Supreme Court of this State and that court's decision was affirmed by the Supreme Court of the United States. In the proceeding before the Interstate Commerce Commission, which the City of Los Angeles brought, hypothetical certificates of public convenience and necessity were issued by that Commission granting to the railroads involved the necessary authority to abandon, relocate and extend their interstate rail lines and, jointly, to use facilities in order to make possible the realization of a union terminal in that city. The following cases demonstrate the foregoing to

be the legal history of that particular proceeding: Railroad Commission v. Southern Pacific Co., et al., 264 U.S. 331, 347-348, 68 L. ed. 713, 719; Interstate Commerce Commission v. United States of America, ex rel. City of Los Angeles, 280 U.S. 52, 62-64, 74 L. ed. 163, 167, 168; Municipal League v. Southern Pacific Company, et al., 30 C.R.C. 151; A.T. & S.F. Ry. Co. v. Railroad Commission, 209 Cal. 460; A.T. & S.F. Ry. Co. v. Railroad Commission, 283 U.S. 380, 393-394, 75 L. ed. 1128, 1137. These cited decisions of the Supreme Court of the United States clearly indicate that, in a matter of this nature, Federal authority should be secured first. The issue here presented is governed by the rule of primary jurisdiction recognized by administrative law. It is analogous to a situation involving the condemnation of the operative property of a railroad which requires the removal and relocation of facilities. In such a situation, condemnation must await the securing of the requisite authority from the appropriate regulatory body to remove and relocate such facilities. (Northwestern Pacific R.R. Co. v. Superior Court, 34 Cal. 2d 454, 458.)

Finally, we desire to point out that the procedure adopted by this Commission in any case must depend for its validity upon the requirement of the public interest and not upon the desires or conveniences of the parties. Furthermore, this Commission may prescribe any procedure consistent with due process unless a specific constitutional or statutory provision requires it to proceed in a particular way. (Saunby v. Railroad Commission, 191 Cal. 226, 231; Sale v. Railroad Commission, 15 Cal. 2d 612, 618.)

For the foregoing reasons, IT IS ORDERED that the petition for rehearing filed herein by the complainants be and the same is hereby

denied.

Dated, San Francisco, California, this 6th day of April, 1954.

President

Commissioners