

# ORIGINAL

Decision No. 52511

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HENRY F. ZASLOW and MARILYN ZASLOW, )  
Complainants, )

vs. )

THE ATCHISON, TOPEKA AND SANTA FE )  
RAILWAY COMPANY, a corporation, )  
Defendant. )

Case No. 5660

Morton Feiler, for complainants;  
William F. Brooks, for The Atchison, Topeka  
and Santa Fe Railway Company, defendant;  
H. F. Christenson, for the Commission staff.

## O P I N I O N

On June 17, 1955, Henry F. Zaslow and Marilyn Zaslow, hereinafter referred to as complainants, filed the instant complaint against The Atchison, Topeka and Santa Fe Railway Company, a corporation, hereinafter referred to as defendant. The complainants request an order, under Section 7537 of the Public Utilities Code, requiring the defendant to construct and at all times maintain a private crossing over its railroad and railroad right of way in Redondo Beach, California, to connect complainants' unimproved real property with Pacific Avenue. In their complaint, among other things, the complainants allege that they are the owners in fee of a certain parcel of land in Redondo Beach; that the property is an island surrounded on three sides by property of the Southern California Edison Company and on the fourth side by the defendant's right of way; that the only means of ingress and egress to and from complainants' property is by a private crossing over the railroad and railroad

20 feet in width from Pacific Avenue across the defendant's right of way to their property at or near the southern end of the side contiguous to defendant's right of way. The profiles of the land between Pacific Avenue and complainants' property and the location of the proposed crossing are shown on Exhibit 19-B. At the point of the proposed crossing there will be a grade of approximately 10 per cent. The complainants have offered to pay the cost of construction and, after construction, to maintain the road to two feet outside of the rails.

Except for that portion of their property abutting on defendant's right of way, complainants' property is entirely surrounded by the property of the Southern California Edison Company. In December 1946, at the request of the Southern California Edison Company and at that company's expense, the defendant constructed an industry track from the Redondo branch into the Edison Company property. This track passes through complainants' property as a single track approximately midway between the ends of the portion contiguous to the defendant's Redondo branch. It will be necessary to remove the portion of the industry track passing through complainants' property before that property is improved with a building. Exhibit No. 1 shows the complainants' property, the industry track and the location of the streets in the vicinity. X

A real estate appraiser called as a witness by the complainants testified that if there were an ingress and egress to and from the property as proposed by the complainants the property would be worth \$27,400; that it is zoned for heavy industrial purposes; and that there is no heavy industry property in the vicinity except that of the Southern California Edison Company. The witness did not know the value of the property without the crossing but said it would have very little value.

Complainant Henry Zaslow testified that he had received an inquiry from the Dumont Aviation Company concerning the property; that on March 23, 1955, the defendant notified the complainants that they could have a crossing if it did not interfere with the railroad's operations; and that later the defendant notified the complainants that it was impractical to construct a private crossing. The witness said that without an ingress and egress the Southern California Edison Company was the only company which could use the property and on about March 1, 1955, this company offered the complainants \$2,500 for the property.

An industrial agent for the defendant testified that the Redondo branch is 5.6 miles in length; that there is a crossing at Beryl Street approximately 550 feet south of the proposed crossing and another at Second Street, approximately 2,900 feet north of the proposed crossing. During the period from August 1, 1955, to October 31, 1955, he said, a total of 26 trains making 52 train movements passed over the track at the point of the proposed crossing. The track, he said, is used exclusively for freight, and a train, as he used the term, could consist of an engine only.

There was other evidence by the defendant to show that complainants could get to and from their property by going from 300 to 400 feet across private property to either Beryl Street or Hermosa Avenue. Such methods of ingress and egress would, however, require the acquisition by the complainants of private rights of way or roadways. There is no evidence to show either the cost thereof or that the owners of the property over which the roadways would be constructed would sell the necessary land or grant an easement for road purposes. The complainants objected to any such methods of entrance as impractical.

On the evidence of record herein it appears, and we find, that authority to construct the proposed crossing is necessary to permit the development and use of complainants' property for commercial or industrial use. The actual construction is not necessary, however, until such development is undertaken. The defendant railroad has not only expressed its consent to the construction, at complainants' expense, at such time as the necessity therefor becomes established by the completion of plans for the development and use of the property, but has raised no objection to the taking of an easement across its property without compensation. The order which follows will reflect the understanding of the parties in these respects.

O R D E R

A complaint for a private crossing having been filed by Henry F. Zaslow and Marilyn Zaslow against The Atchison, Topeka and Santa Fe Railway Company, a public hearing having been held thereon and the Commission having found that the proposed crossing is required,

IT IS ORDERED:

1. That permission be and it hereby is granted to Henry F. Zaslow and Marilyn Zaslow to construct a private crossing at grade across the right of way and tracks of The Atchison, Topeka and Santa Fe Railway Company in the City of Redondo Beach, County of Los Angeles, the center line to be located at approximately The Atchison, Topeka and Santa Fe Railway Company Engineering Station 532 + 47.2
2. That the entire expense of constructing and maintaining the crossing shall be borne by the complainants.
3. Construction shall not be commenced until complainants shall have entered into a bona fide contract or contracts looking to the

prompt development of the property by the construction of appropriate structures thereon designed for commercial and/or industrial use.

4. That construction shall be equal or superior to Standard No. 2 of General Order No. 72, shall be not less than 20 feet in width and at an angle of 90 degrees to the railroad, with grades of approach not greater than 10 per cent; shall be protected by a suitable private crossing sign and shall in every way be made safe for the passage thereon of vehicles.

5. That complainants shall, within thirty days after the completion of the crossing pursuant to this order, notify this Commission in writing.

The Commission reserves the right to make such further orders relative to the location, construction operation, maintenance and protection of said crossing as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The authority herein granted shall lapse and become void unless the crossing and protection are completed within one year from the effective date hereof unless such time is extended by order of this Commission.

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

Dated at San Francisco, California, this 22<sup>nd</sup> day of

January 1956.

John E. Mitchell  
President  
Justice J. Conner  
Paul Waterhouse  
Walter J. Daly  
Be Harbo  
Commissioners