

ORIGINAL

Decision No. 53477

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Brotherhood of Railroad Trainmen,
 Complainant,
 vs.
 Northwestern Pacific Railroad Co.,
 a corporation,
 Defendant.

Case No. 5747

D. W. Brobst, for complainant.
R. E. Wedekind, for defendant.
C. Milne, for the Commission staff.

O P I N I O N

This complaint filed March 21, 1956, states as ground for complaint that on the 5th, 18th and 19th of January, 1955, and on the 19th and 20th of September, 1955, defendant violated the Labor Code, Section 6903, in the operation of a diesel crane on its line a distance of over one-half mile from a permanent station or siding. The prayer requests the Commission to issue an order that this violation of the Code constituting a misdemeanor be referred to the District Attorney of Alameda County for prosecution.

Public hearing was held on June 21, 1956, in San Francisco, before Examiner J. A. Rowe, at which time evidence was adduced and the matter submitted.

According to the testimony submitted by complainant this crane was operated on the 5th, 18th and 19th of January, 1955, moving dirt and mud across the tracks along defendant's railroad between Mile Posts 187 and 191. This crane, on January 5, 1955, was moved from Ramsey to Tunnel No. 24, a distance of 1.24 mile.

The crane was operated on this journey by a crane engineer accompanied only by two laborers who acted as flagmen while the crane was transferring mud from one side of the tracks to the other. After the crane reached the vicinity of Tunnel No. 24, it moved from point to point carrying on this mud moving operation. At no time was the crane more than one-half mile distant from a switch.

In September, 1955, on the days above stated, the crane was again in the area of this same tunnel. On this occasion, however, the crane was brought to the area from Island Mountain by train. When the crane engineer took over control of the crane during the days mentioned in September, he moved the crane from point to point as work progressed.

Said Section 6903 requires one conductor and one brakeman in addition to the crane engineer under certain circumstances. The exact language here pertinent, Section 6903(d), is quoted as follows: ✓

The provisions of this section with reference to self-propelled pile drivers or other self-propelled vehicles apply only where the self-propelled pile driver or vehicle is moved under its own power from one permanent station or siding to the place of work if the distance is one-half mile or more.

The Labor Code clearly does not apply to the situation where the crane is delivered to the site of operations by a train properly manned and thereafter is moved from place to place as required by the work being performed. In the phraseology of the Code section, its requirements apply "only where" the "vehicle is moved under its own power from one permanent station or siding to the place of work if the distance is one-half mile or more."

No violations appear from the testimony of record referring to the September operation. The only possible violation consisted of the movement of the crane in January, 1955, by the crane engineer accompanied by only two laborers acting as flagmen and without a conductor and brakeman, from the permanent station or siding at Island Mountain to the place of work in the environ of Tunnel No. 24, where the crane worked in various spots.

While the crane is engaged in moving dirt from one side of the tracks to the other, the most appropriate protection appears to be that of having flagmen stationed at reasonable distances from the crane in either direction along the tracks to warn and stop approaching trains. The presence of spurs or sidings at intervals of approximately one mile apart in the area of operations presents an added factor of safety and of convenience in permitting ready passing of trains.

Because the possible violation in January 1955 as shown by the record occurred more than one year prior to the filing of this complaint and consequently is barred by the statute of limitations, a proceeding under the Labor Code would not lie in this matter. In the circumstances, no relief may be granted pursuant to the complaint herein.

O R D E R

Complaint having been made, a public hearing duly held, and the Commission being fully advised in the premises,

IT IS ORDERED that the complaint in Case No. 5747 is dismissed.

The effective date of this decision shall be twenty days after service hereof.

Dated at San Francisco, California, this 23rd day of July, 1956.

John L. Maxwell
 President

Justin J. Crane

Robert L. ...

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 Commissioners