

**ORIGINAL**

Decision No. 5347S

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BROTHERHOOD OF RAILROAD TRAINMEN, )

Complainant, )

vs. )

Case No. 5746

THE WESTERN PACIFIC RAILROAD )  
COMPANY, a corporation, )

Defendant. )

D. W. Brobst, for complainant.  
E. L. Van Dellen, for defendant.  
C. Milne, for the Commission staff.

O P I N I O N

By this complaint filed March 21, 1956, the Brotherhood of Railroad Trainmen allege that infractions of the Commission's General Order No. 26-D are periodically happening and are reported to the local operating officers who have not evidenced a willingness to comply with such order. Specifically, it was asserted that on November 12, 1955, a freight car with an excess dimension load was not properly blocked together with four other cars having excess dimension loads as required by Section 7.4 of said general order.

The complainant stated that at the hearing it would present witnesses and evidence in support of its position that corrective action is required on defendant's Eastern Division in the interest of health and safety and to minimize the hazard of accidents and requested the Commission to require defendant to cease and desist from future violations of said General Order No. 26-D.

The answer filed by defendant admitted such infraction as to a car originating at Winnemucca, Nevada, but alleged its failure to properly block this car with other cars with excess height loads in the train was occasioned through an oversight.

Public hearing was held in San Francisco on June 21, 1956, before Examiner Rowe and the matter duly submitted for decision.

At this hearing counsel for complainant stated that it would introduce no evidence as to the infraction alleged to have been committed on November 12, 1955, but that instead he would stipulate that the facts were as admitted in the answer. No evidence of any other violation of General Order No. 26-D was adduced. There is no evidence of record of any willful violation of said general order and no evidence of any unwillingness on the part of defendant to comply with any Commission order.

The motion of defendant that the complaint be dismissed for failure to allege more than one violation will be denied. Complainant having failed to prove any willful violation of said general order, and having failed to prove any need for a cease and desist order against defendant, the Commission finds that the prayer of the complainant in Case No. 5746 should be denied.

O R D E R

Complaint No. 5746 having been filed, public hearing having been held and the Commission being fully advised in the premises,

IT IS ORDERED that defendant's motion to dismiss the complaint in Case No. 5746 is denied.

IT IS FURTHER ORDERED that the complaint in said numbered case is dismissed.

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

Dated at San Francisco, California, this 23<sup>rd</sup> day of July, 1956.

*E. Mitchell*  
President  
*Justin J. Galea*  
*Roy L. Intereven*  
*Walter D. Dade*  
*B. Hardy*  
Commissioners