

ORIGINAL

Decision No. 53971

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BROTHERHOOD OF RAILROAD TRAINMEN, )  
 Complainant, )  
 vs. )  
 THE ATCHISON, TOPEKA AND SANTA FE )  
 RAILWAY COMPANY, a corporation, )  
 Defendant. )

Case No. 5745

Hildebrand, Bills and McLeod, attorneys, by  
D. W. Brobst, for complainant.  
Robert W. Walker, attorney, for defendant.  
C. E. Milne, for the Commission staff.

O P I N I O N

By Decision No. 43974, dated March 21, 1950, in Case No. 4988, this Commission ordered that The Atchison, Topeka and Santa Fe Railway Company "shall not permit any local freight train to operate between Hobart and Fullerton on which there is not employed at least one conductor and three assigned brakemen."

At approximately 2 a.m. November 7, 1955, the defendant moved a car from its station at Fullerton to the Hunt Food Company spur located at a station called Basta. The crew making this move consisted of an engineer, fireman, conductor and two brakemen.

On March 21, 1956, the Brotherhood of Railroad Trainmen filed a complaint against the defendant railway. Subsequently on April 20, 1956, the defendant filed an answer denying that the move in question was covered by Decision No. 43974 supra.

A public hearing was held before Examiner Grant E. Syphers on June 28, 1956, in Los Angeles.

At the hearing the parties stipulated to the facts as hereinbefore related.

The defense of the railroad was that the movement is not the type covered by Decision No. 43974, it being contended that this was not a local freight train but rather a switching movement. In support of this position, testimony was presented disclosing that the spur track at Basta to the Hunt Food Company is located approximately two miles westerly of the depot at Fullerton. It is within the railroad yard limits which extend about one-half mile westerly of Basta. Likewise it is within the city limits of Fullerton which are approximately one and one-half miles west of Basta. Exhibit No. 1 is a map showing the locations involved.

It was further pointed out that the yard limit was extended on October 17, 1955, to its present location. Prior to that it did not include the spur at Basta.

After a consideration of all of this record, including the evidence presented and the statements of counsel, we find that this train movement is one that is contemplated by Decision No. 43974 supra. It was an operation on the tracks "between Hobart and Fullerton." The fact that it was entirely within the yard limits and within the city limits of Fullerton does not do away with the necessity of maintaining safe operating conditions. It was, in fact, a local freight train operation between the rail station at Fullerton and the rail station at Basta and as such should be conducted with three brakemen in accordance with the terms of Decision No. 43974 supra.

In its complaint, complainant requested that the Commission refer the therein alleged violation of the Commission's order to the District Attorney for prosecution. However, this request was not pressed at the trial of the case.

After giving careful consideration to all the facts and circumstances of record we are of the opinion that the violation in question is not such that it justifies this Commission in referring the same to the District Attorney for criminal prosecution. We find no element of willfulness in the conduct of the defendant. The action taken herein must not be construed by the defendant as condoning its violation of the Commission's order and defendant is hereby placed upon notice that future infractions will meet with sterner treatment.

O R D E R

Complaint and answer as above entitled having been filed, a public hearing having been held in the matter, the Commission being fully advised in the premises, and good cause appearing,

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IT IS ORDERED that the above-entitled complaint be  
and it is hereby dismissed.

This order shall be effective twenty days after service  
thereof upon complainant and defendant.

Dated at Los Angeles, California, this 23rd  
day of October, 1956.

John E. Mitchell  
President  
Justus J. Casper  
Paul J. Casper  
Wm. J. Casper  
B. Hardy  
Commissioners