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Decision No. 54667

ORIGINAL

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. 5772

D. W. Brobst, for the Brotherhood of Railroad Trainmen.
Robert W. Walker and Merrill K. Albert, for The Atchison, Topeka and Santa Fe Railway Company.
Lynn E. Hull, for the Public Utilities Commission of the State of California.

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."

On February 18, 1956, the defendant moved a train of cars consisting of an engine and approximately ten cars between the First Street Yards and Milepost 148-3/4 in the Vail District of the Hobart Yard, and then returned. This train was manned by one employee who has the permanent rating of switchman, but who acted as the conductor, and three other employees who acted as brakemen.

On May 24, 1956, the Brotherhood of Railroad Trainmen filed a complaint against the defendant railway, alleging in substance that the employee who acted as conductor on this movement was not qualified to do so. Under date of June 23, 1956, the defendant filed an answer denying the allegations in the complaint and alleging that the operation in question was a switching operation entirely within yard limits.

A public hearing was held before Examiner Grant E. Syphers on January 3, 1957, at which time evidence was adduced and the matter submitted.

At the hearing testimony was presented by the employee who acted as conductor on this movement, and by the assistant general manager of the defendant railway. The facts disclosed that the train movement was set up on the dispatcher's sheet as one between the First Street Yards and Fullerton, but that after the trainmaster had learned the movement did not have a regular road crew it was confined to the yard limits. In actual fact, the train moved out to Milepost 148-3/4 and then returned.

The defendant railway contended that this movement was not a violation of any orders of this Commission since it was a switching movement and not a local freight train such as is referred to in Decision No. 43974, supra. It was further contended by the railway that even if this movement is considered to be a local freight movement, there were three brakemen and a conductor acting as the crew. The evidence shows that the employee who acted as conductor on the movement is employed as a switchman by defendant railway, but for a period of two years and 89 days commencing in 1945 he was employed as a freight and passenger conductor for the Pacific Electric Railway Company. Because of this experience it

was contended that this man was qualified to act as a conductor under the definition set up in Section 6906 (b) of the Labor Code of California.

As a third defense it was contended by the railway that Section 6906 (b) is unconstitutional since it is an infringement of the liberty of contract without due process of law (Smith vs. Texas, 1914, 233 U.S. 630; 58 L. Ed. 1129).

The contention of the complainant was that this was a train operation which was required to have a full crew as prescribed by Decision No. 43974, supra, and that the proposed operation was a violation of that order (See Brotherhood of Railroad Trainmen vs. Santa Fe Railway, Decision No. 53971, dated October 23, 1956, in Case No. 5745). The man who acted as a conductor was neither employed nor recognized as a conductor by the defendant railway.

A fair view of all of the evidence adduced in this matter leads us to make the following findings of fact:

(1) The employee who acted as conductor on the movement was not employed by defendant as a conductor nor did his personnel record indicate that he had such a status.

(2) The train movement in question was, in fact, a local train movement such as is contemplated by Decision No. 43974, supra, even though it did not in fact leave the yard limits.

As was pointed out in Decision No. 53971, supra, the fact that a movement is entirely within the yard limits "does not do away with the necessity of maintaining safe operating conditions." We cannot conclude from the evidence in this record that this movement was a switching operation. It started out as a local train

movement and proceeded part way on its journey before it was returned. Accordingly, it was a movement which required a conductor and three brakemen.

The issue then resolves itself down to a consideration of whether or not the employee who acted as a conductor was actually such an employee under the terms of the decision and the statutes. While it is true that this employee had worked for the Pacific Electric Railway for a period of slightly more than two years as a freight and passenger conductor, it is also true that he was not employed for this purpose, nor did he have this rating with the defendant railway company. In the light of this situation we can only conclude that this employee was not a conductor such as is contemplated by Decision No. 43974, supra. In the light of these findings it becomes unnecessary to determine whether or not Section 6906 (b) of the Labor Code of California is unconstitutional.

Inasmuch as the offense here was technical at best, and inasmuch as the record clearly discloses that the movement was stopped before it left the yard limits, after the trainmaster learned that it was not operated by a regular road crew, we conclude that the defendant railway company was not guilty of any deliberate violation of the requirements of this Commission. Therefore, we are of the opinion that the violation in question does not require any further corrective action. However, the defendant railway company is directed to comply strictly with the requirements of the order of this Commission and of the law relative to crews that may operate a local freight train.

C-5772 GF

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,

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

This order shall become effective twenty days after service thereof upon defendant.

Dated at San Francisco, California, this 12th day of March, 1957.

Peter E. Mitchell
President

Rex Hardy
C. Lyn Fox
Commissioners