

**ORIGINAL**

Decision No. 55025

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the reasonableness of minimum clearances on railroads and street railroads, with reference to side structures, overhead structures, parallel tracks, and crossings of public roads, highways and streets, as prescribed by General Order 26-C and Supplement 7 thereto.

Case No. 4919

BROTHERHOOD OF RAILROAD TRAINMEN,

Complainant,

vs.

Case No. 5805

THE WESTERN PACIFIC RAILROAD COMPANY,  
a corporation,

Defendant.

Investigation into the operations and practices of WESTERN PACIFIC RAILROAD COMPANY, a corporation.

Case No. 5879

Otis J. Gibson, for Western Pacific Railroad Company, defendant.  
Marshall W. Vorkink, for Union Pacific Railroad Company; R. E. Wedekind, for Southern Pacific Company; Robert W. Walker and Richard K. Knowlton, for The Atchison, Topeka and Santa Fe Railway Company; George D. Moe, for State of California, Department of Public Works; George W. Ballard, for Brotherhood of Railway Trainmen; Gordon C. Larkin, for Order of Railway Conductors & Brakemen; William V. Ellis, for Brotherhood of Locomotive Firemen & Engineers; G. R. Mitchell, for Brotherhood of Locomotive Engineers; and E. A. McMillan, for California State Legislative Committee, Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees; interested parties.

H. F. Wiggins, for the Commission staff.

O P I N I O N

In Case No. 4919 the Commission under date of February 1, 1948, issued Decision No. 41135, which decision issued and adopted General Order 26-D. This order provided minimum clearance requirements for railroads and street railroads. Under date of October 13, 1956, the Western Pacific Railroad petitioned the Commission to reopen Case No. 4919 for the purpose of amending Section 7 of General Order 26-D to exempt from the requirements of Subsection 7.4 all open top cars if otherwise in compliance with the requirements of the general order as to width of lading on which the lading exceeds 15 feet 6 inches in height, and the nature of which precludes the possibility of employees getting on top of or passing over such cars and lading. To accomplish this exemption it was specifically provided that there be deleted from Subsection 7.8 of General Order 26-D the following words appearing at the end of such Subsection 7.8: "With the exception of Subsection 7.4 of this order."

Under date of January 15, 1957, the Commission issued an order reopening Case No. 4919 for the purpose of inquiring into this petition.

Under date of August 14, 1956, the Brotherhood of Railroad Trainmen filed a complaint against the Western Pacific Railroad alleging certain violations of General Order 26-D. This complaint was assigned Case No. 5805. The Western Pacific Railroad on September 11, 1956, filed an answer admitting the violations charged in the complaint.

On January 15, 1957, this Commission in Case No. 5879 issued an order of investigation against the Western Pacific Railroad to inquire into the alleged violations of General Order 26-D.

Public hearings were held before Commissioner C. Lyn Fox and Examiner Grant E. Syphers in Sacramento on March 6 and 7, 1957, at which time evidence was adduced and the matter submitted subject to the filing of supplemental statements or briefs. These now have been filed and the matter is ready for decision.

At the hearing testimony was presented relative to the transporting of freight in high cars by Western Pacific Railroad. Exhibits 1 and 2 are photographs of the types of loads and the cars so used. Exhibits 3 and 4 are copies of the instructions issued by the defendant railroad to its employees, advising them of the requirements of General Order 26-D.

The testimony presented by the railroad, as well as its pleadings in these matters, admit violations of General Order 26-D so far as high cars are concerned. The pertinent sections of the general order here involved are as follows:

- 7.3 "All open top cars with lading extending laterally in excess of five (5) feet five (5) inches from center line of car or in excess of fifteen (15) feet six (6) inches in height above top of rail, shall be placarded on the load itself in a conspicuous place when practicable, and the car shall be marked, stenciled, or placarded at locations specified in subsection 3.19 of this order.
- 7.4 "On any train, the consist of which includes cars loaded as described in subsection 7.3 of this order, such cars shall be blocked together in one place in the train and if its length permits, they shall be trained at least five (5) cars distant from both the caboose and the engine.
- 7.8 "Cars on which the lading exceeds fifteen (15) feet six (6) inches in height above top of rail, if otherwise in compliance with these requirements as to width of lading, and the nature of which precludes the probability of employees getting on top of or passing over them, are exempt from the conditions of this section with the exception of subsection 7.4 of this order."

It was the testimony of the railroad witnesses that there is a considerable movement of automobile frames hauled in open top cars and so loaded that the height exceeds 15 feet 6 inches. It was contended that one of the principal reasons for the requirements of blocking high cars together in a train was for the safety of employees who might go over the top of these cars. However, the testimony discloses that employees do not now go over the tops of such cars in conducting such train operations, and indeed, due to the nature of the loads, it would be highly improbable that any employee could go over the top of such cars.

Exhibit 5 consists of twelve photographs showing loads of automobile frames in open top cars where the over-all height of the load exceeds 15 feet 6 inches. Generally these loads come from eastern points and in the case of the Western Pacific they are blocked in the yards of the Union Pacific Railroad in Utah. The switching in the Utah Yards is done by employees of the Denver, Rio Grande, Western Railroad and not by employees of the Western Pacific Railroad. However, the trains are inspected at Elko, Nevada, and again at Portola, California.

Testimony was presented by a witness for The Atchison, Topeka and Santa Fe Railway showing that carrier hauls automobile frames in open cars and that the loads are in excess of the 15 foot 6 inch height requirement. These trains are made up near Kansas City, Kansas.

A witness for the Union Pacific Railroad testified as to the hauling of similar lading by that carrier. Its trains are made up at Salt Lake City or North Platte, Nebraska.

The consensus of the carrier testimony was that the blocking of these high cars serves no useful purpose. The employees do not go over the top of them and generally it is the practice to keep the cars with high lading a sufficient distance from the cab of the engine or the caboose so as to not interfere with the passing of hand signals. There was some testimony to the effect that railroads occasionally handle other types of lading which result in high loads, but principally the problem relates to the handling of automobile frames.

A representative of the Operations Safety Section of this Commission testified as to certain recent changes in railroad operations which affect the provisions of General Order 26-D. The motive power now is mostly diesel rather than steam, and resultantly the use of retainers on cars have been eliminated to a large extent. Likewise, the types of loads have changed to open lading rather than large boxes. In view of these changes it is not necessary for men to be on top of the cars to set the retainers, nor is it probable that they could go over the tops of these open loads of automobile frames. It was the opinion of this witness that the blocking of these open cars with high lading did not now serve any useful purpose, although such cars should be kept at least five cars distant from both the caboose and the engine where the length of the train permits. Exhibit 7 contains the recommendations of the staff witness as to changes which should be made in General Order 26-D.

A consideration of this record and all of the evidence adduced therein leads us to find that Sections 7.4 and 7.8 of General Order 26-D should be modified in accordance with the recommendations

contained in Exhibit 7 except for additional wording in the first sentence for clarification thereof. The record discloses and we find that there is no necessity nor are there any facilities to enable employees to climb on top of lading of open top cars; there are no rules of the railroads which require an employee to get on top of such lading of open top cars; and the blocking of such cars together in a train serves no useful purpose so long as the cars are kept at least five cars distant from the engine or caboose if the length of the train permits.

The ensuing order will provide for amendments to General Order 26-D.

Concerning the complaint against the Western Pacific Railroad, Case No. 5805, and the Commission's investigation into the activities of that railroad, Case No. 5879, we find that the Western Pacific Railroad has violated the provisions of General Order 26-D in several instances.

Specifically, on March 24 and 25, 1956, Western Pacific train designated by symbol CFS-24-extra 902-D, consisting of 73 loaded cars and three empty cars, contained two cars with lading the height of which was in excess of 15 feet 6 inches, which were not blocked together. One of these high cars was the nineteenth car from the engine and the other was the fourth car ahead of the caboose.

On August 8, 1956, a train designated as extra 921-A, going west out of Oroville and consisting of 76 loaded and 12 empty cars, had one excess height load, which car was second ahead of the caboose, and one excess width load, which car was sixtieth ahead of

the caboose. No train orders had been issued to the crew as required by Section 7.5 of General Order 26-D.

On August 15, 1956, train designated as extra 914-D, going west out of Oroville, consisting of 53 loaded and 19 empty cars, had one load of excess width on the twenty-eighth car ahead of the caboose. No train orders as required by General Order 26-D had been issued.

On July 31, 1956, train designated as extra 9195, going east out of Oakland, and consisting of 25 loaded and two empty cars had one car with a load of excess width, and no train orders as required had been issued.

On August 16, 1956, train designated as extra 919-D, going east out of Stockton, consisting of 46 loaded and 16 empty cars, had one car with lading which was both in excess of the height and width requirements. No train order had been issued as required by the general order.

On August 17, 1956, train designated as extra 914-D, going west out of Oroville, consisting of 60 loaded and 19 empty cars, had one excess width car which stood second ahead of the caboose, and one excess width car fifty-second ahead of the caboose. These cars were not blocked together, and no train orders had been issued.

On December 13, 1956, train designated as extra 907-D, going west out of Winnemucca, Nevada, to Portola, California, consisting of 71 loaded cars and one empty car, had two excess width cars standing seventh and eighth ahead of the caboose, two excess height cars standing twelfth and thirteenth ahead of the caboose, and two excess height cars standing sixty-third and sixty-fourth

ahead of the caboose, which cars were not blocked together. Upon reaching Oroville these cars were blocked together and the train orders issued.

A consideration of these violations of General Order 26-D leads us to observe that those relating to failure to block the cars of excess height would not have been violations had the rules been changed as are now proposed, with the exception that in all instances they should have been five cars away from the engine or the caboose. However, this extenuating circumstance does not mean that the violations could not have been avoided. The defendant railroad could have asked this Commission for relief but did not do so until after being charged with some of these violations. Also, the fact that the switching of the Western Pacific trains in Utah was done by employees of another railroad does not relieve the defendant from complying with the provisions of General Order 26-D.

As to the violations relating to the failure to issue proper train orders for the cars of excess width, there appear to be no extenuating circumstances.

In the light of this record, the Western Pacific Railroad will be ordered to cease and desist from any further violations of General Order 26-D.

#### O R D E R

A complaint as above-entitled having been filed, orders of investigation as above-entitled having been instituted, a public hearing having been held thereon, the Commission being fully advised in the premises and hereby finding it to be not adverse to the public interest,



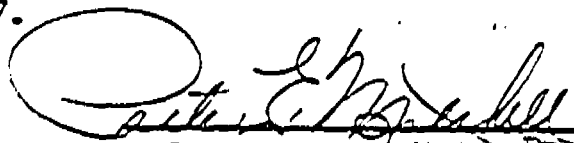
IT IS ORDERED that Subsections 7.4 and 7.8 of General Order 26-D be amended to read as follows:

- 7.4 All open top cars with lading extending laterally in excess of five (5) feet five (5) inches from center line of car shall be blocked together in one place in any train the consist of which includes such lading, and if train length permits, they shall be trained together at least five (5) cars distant from both the caboose and the engine.
- 7.8 Cars on which the lading in excess of fifteen (15) feet six (6) inches in height above top of rail, if otherwise in compliance with these requirements as to width of lading, and the nature of which precludes the probability of employees getting on top of or passing over them, are exempt from the conditions of this section, provided, however, that if train length permits, any such cars shall be trained at least five (5) cars distant from both the caboose and the engine.

IT IS FURTHER ORDERED that the Western Pacific Railroad Company be, and it hereby is, directed to cease and desist from any further violations of General Order 26-D.

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

Dated at San Francisco, California, this 21st day of May, 1957.

  
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President

  
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Commissioner

  
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