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ORIGINAL

Decision No. 65140

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and practices of UNION PACIFIC RAILROAD COMPANY, a corporation, with respect to the use in service of cabooses in conformity with provisions of General Order No. 114.

Case No. 7496
(Instituted December 4, 1962)

In the Matter of the Application of UNION PACIFIC RAILROAD COMPANY, a corporation, requesting an extension of time in which to comply with General Order No. 114.

Application No. 44941
(Filed November 14, 1962)

Marshall W. Vorkink, for Union Pacific Railroad Company, applicant and respondent.
Leonard M. Wickliffe and Melvin A. Wilkie, for California State Legislative Committee, Order of Railway Conductors and Brakemen; George W. Ballard, for Brotherhood of Railroad Trainmen, AFL-CIO; protestants and interested parties.
Hugh N. Orr, Claude E. Carlock and Clent E. Milne, for the Commission staff.

O P I N I O N

These matters were heard before Examiner Thompson at Los Angeles on January 15, 1963 and were submitted.

In the above-entitled application proceeding, Union Pacific Railroad Company seeks an extension of time until February 2, 1963 within which to comply with provisions of General Order No. 114 which became effective October 2, 1962. Protestants are Brotherhood of Railroad Trainmen, hereinafter sometimes called Trainmen; and California State Legislative Committee, Order of Railway Conductors and Brakemen, hereinafter sometimes called Conductors.

The principal issue in the above-entitled investigation proceeding is whether respondent has operated any caboose in service

within the State of California since October 2, 1962 in violation of the provisions of General Order No. 114. The general order (Appendix A of Decision No. 62558 in Case No. 7002) was issued September 12, 1961 and prescribes requirements concerning the construction and the furnishing of facilities and supplies on cabooses so as to promote and safeguard the health and safety of railroad employees. In general, the order allowed the railroads one year in which to make certain improvements on cabooses, including the furnishing of supplies and the installation of facilities not requiring major reconstruction, and two years within which to accomplish the improvements requiring such major reconstruction. The former were to be accomplished by October 2, 1962 and the order provides that no caboose, other than cabooses used as rider cars in yard transfer movements having a one-way route mileage of 16 miles or less, shall be used in service after that date unless it complies with those requirements.

The following facts are not controverted and we find:

1. Respondent was served with a copy of Decision No. 62558 (General Order No. 114) on or before October 1, 1961 and at all times subsequent to said date had knowledge of the requirements of said order.
2. Subsequent to October 2, 1962 respondent used over fifty cabooses in service which were subject to the provisions of the general order.
3. None of said cabooses was equipped with wind deflectors, window shades and fire extinguishers until after November 1, 1962.
4. Respondent failed to comply with the provisions of General Order No. 114 in that said order provides that no caboose shall be used in service subsequent to October 2, 1962, unless it is equipped with wind deflectors, window shades and fire extinguishers.

A member of the Safety Section of the Commission inspected 18 cabooses maintained by respondent in October 1962. He testified that he had observed three instances where the weather stripping had become ineffective, two instances where there were no soap dispensers and one instance where the first aid kit was not sealed and some of the contents had been removed. The witness did not state whether those conditions had been reported to the respondent by the operating personnel or had been recorded upon the equipment defect and repair register maintained in the cabooses.

Respondent's division superintendent and its mechanical superintendent testified substantially as follows. Commencing the early part of November, 1962, respondent instituted a program under which all of its cabooses which are used in California operations were to be equipped with wind deflectors, window shades, fire extinguishers and other facilities and supplies required by General Order No. 114, to be installed not later than October 2, 1962. The program was completed in January, 1963. It was stated that respondent overlooked the above-mentioned requirements because its greatest concern over General Order No. 114 was the requirements of Section 7 of the general order regarding the seating arrangements in the caboose cupolas.^{1/} In January 1962 respondent sent Caboose No. 25283 to its shops at Salt Lake City for alteration and modification to comply with all of the provisions of General Order No. 114, including the seating arrangement requirements. It was respondent's intention to obtain approval from conductors and trainmen as well as from the Commission of the modified Caboose No. 25283 and then place all of the cabooses in the shops for the approved modifications so that all provisions of the general order would be complied with prior to October 2, 1962. Early in February 1962 the test caboose was modified and was made available for inspection. It was also placed in service for 60 days

1/ This requirement does not become effective until October 2, 1963.

in order to receive comments from the operating personnel. As a result of the inspections and comments, a number of further modifications were made. Most of the comments by the conductors, trainmen and the staff of the Safety Section concerned the seating arrangements in the cupola. The cupola was reconstructed twice during the period February 1962 to October 1962. The witnesses testified it was because of their preoccupation with that particular problem that the modifications required to be completed by October 2, 1962 were overlooked.

Conductors presented evidence showing that the cabooses were not equipped with many of the required facilities during October 1962. A conductor employed by respondent testified that during the period January 11 to and including January 14, 1963 he had inspected nine cabooses. He stated that the cabooses were generally equipped in accordance with the provisions of General Order No. 114 except that in all instances the windows in the doors at the ends of the cabooses were not equipped with window shades and that in general the bunks were equipped with cushions which were not the same as the dimensions of the bunks.

We find that respondent failed to comply with the provisions of General Order No. 114; however, it has recently modified its cabooses so that they substantially fulfill the requirements.

The respondent has offered evidence seeking to justify its delay in accomplishing the modifications required. We point out that said modifications were made by respondent within a period of less than 90 days. The delay in complying with the provisions of General Order No. 114, in the first instance, is inexcusable. The cabooses could easily have been placed in proper condition for service prior to October 2, 1962.

The order instituting the investigation herein contemplates the possibility of ordering respondent to cease and desist from future violations of General Order No. 114. Such an order will issue herein. As an additional sanction, the Commission will cause to be instituted against respondent appropriate penalty actions and will give consideration to a contempt proceeding.

With respect to the application filed November 14, 1962, applicant sought an extension of time until February 2, 1963, within which to comply with General Order No. 114. That application is now moot and will be dismissed.

ORDER

IT IS ORDERED that:

1. Application No. 44941 is dismissed.
2. Union Pacific Railroad Company, a corporation, shall cease and desist from failing to comply with any of the requirements of General Order No. 114.

The Secretary is directed to cause a certified copy of this order to be personally served upon respondent and the effective date of this order shall be twenty days after such service.

Dated at San Francisco, California, this 26th day of MARCH, 1963.

George H. Thayer
President

William W. Bennett
Commissioners

Frederick B. Holoboff

William W. Bennett
Commissioners