

**ORIGINAL**Decision No. 65243

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of UNION PACIFIC RAILROAD COMPANY, )  
a corporation, requesting approval )  
of a proposed type of seating to )  
be employed in Applicant's )  
caboose. )

Application No. 45104  
Filed January 11, 1963

Marshall W. Vorkink, for applicant.  
George W. Ballard, for Brotherhood of  
Railroad Trainmen, AFL-CIO, protestant.  
Leonard M. Wickliffe and Melvin A. Wilkie,  
for California State Legislative Com-  
mittee, Order of Railway Conductors and  
Brakemen, interested party.  
C. E. Milne, for the Commission staff.

O P I N I O N

This application was heard and submitted before Examiner Thompson at Los Angeles on March 6, 1963. Union Pacific Railroad Company seeks authority to install a type of seating which it calls a contour seat in the cupolas of its cabooses instead of the pullman type seat specified in Section 7 of General Order No. 114. Brotherhood of Railroad Trainmen, hereinafter sometimes called Trainmen, protests the proposal. California State Legislative Committee, Order of Railway Conductors and Brakemen, hereinafter sometimes called Conductors, supports the application. The Safety Section of the Commission's Transportation Division participated in the proceeding and supports the granting of the application.

The proposed contour seat consists of two bunk cushions tailored to fit a type of bunk in the cupola which is often termed a "lazy board." There is an upholstered roll, which is movable, under the cushions so as to elevate the knees of the trainman. There is

an upholstered backrest which is movable so that it can be affixed to either end of the cupola. The backrest is adjustable to three positions in order to accommodate the comfort of the trainman. When seated in the contour seat, the position of the trainman would be similar to that of a person in a hospital bed with the back fully raised and the center portion raised under the knees.

Section 7 of General Order No. 114 provides certain minimum standards for seats in the cupolas and bay windows of cabooses.<sup>1</sup> Other than the fact that the contour seat is not of the pullman type, it meets the requirements of Section 7 with respect to the dimensions set forth therein. Exhibit 1 is the drawings for the construction of the contour seat. Exhibit 2 is a photograph of the seat installed in the cupola of one of the applicant's cabooses. A Senior Transportation Supervisor of the Commission's Safety Section testified that he had examined the seat installed in a UP caboose. He said that the seat meets the requirements of Section 7, other than the fact that it is not of the pullman type, and that it provides protection to the head and neck from injuries due to slack action of the trains.

<sup>1</sup> "Section 7. Seats and Cushions: Seats and cushions shall be provided with a shock absorbent material initially at least three inches in thickness and backrests shall be of a sufficient height to protect the neck and head from injuries. Seats in cupolas shall be of the pullman type and those in bays shall be of the passenger reversible type. The top of said seats shall not be lower than 11 inches nor higher than nine inches beneath the cupola or bay window sills and no more than 18 inches above the floor or footrest. The backrests shall incline backward to not less than three inches nor more than five inches from the perpendicular and shall be provided with shock absorbent material initially of at least three inches in thickness. Subject to the approval of the Commission, seats of a different design or materials may be used when such design or materials provide equal or better protection or comfort than those enumerated in this section."

In the cabooses operated by applicant there are lazy-board type bunks on both sides of the cupola. On one side, there are lockers and storage space immediately below the bunk. On the other side a water tank is installed immediately below the bunk. It was testified that the cost of installing pullman type seats in the cabooses would amount to \$848 per caboose. Much of this cost is attributed to the expense of relocating the water tank and the pipes connected thereto. It was developed that said cost estimate is conservative.

Following the issuance by the Commission of General Order No. 114, applicant made modifications in one of its cabooses so that a contour seat was installed on the side of the cupola having the water tank and a pullman type seat, conforming to the specifications in the general order, was installed on the other. There was some disagreement among the parties whether the pullman seat met the requirements of the general order; Trainmen asserted that it did not comply and Conductors asserted that, if the pullman seat did meet the requirements, Section 7 should be amended; however, the Safety Section representative testified that he had measured the pullman seat and that it did meet the specifications provided for in Section 7 of the general order. A doctor of medicine who was qualified as an expert in orthopedics testified that he had examined the pullman seat and the contour seat in the test caboose and that it was his opinion, without any qualifications, that the contour seat provides greater protection from injury and is superior to the pullman type seat, insofar as the promotion and safeguard of the health and safety of railroad employees are concerned.

Protestant did not offer evidence. It contends that the application should not be granted for two reasons. One is that the contour seat prevents the trainman in the cupola from seeing to the

rear of the train without placing his head out of the window or assuming an awkward kneeling position so as to peer over the top of the backrest. It also contends that the contour seat arrangement will be unique with the Union Pacific and that the health and safety of trainmen will be impaired because of the lack of uniformity of the seating arrangements in cabooses operated in the State. He stated that trainmen develop certain habits and reflexes in their work, such as reaching at particular locations for grab handles and stanchions, so that when they are in a caboose which is not similar to the ones on which they have been accustomed to work, injuries could result if they attempt to support themselves by reaching for grab handles or stanchions which are not in the customary locations.

Conductors urged that the application be granted without delay so that Union Pacific could accomplish the modifications prior to October 1963. It (Conductors) is not satisfied with the present installation of the windows in the sides of the cupola because the latches prevent the crossing of the windows so as to make the weatherstripping effective.

The work rules of the applicant provide that when the train is proceeding along a section where there is double track, a trainman shall, under certain circumstances, be on the rear of the train to be in a position to give or receive signals. In such instances there would be no reason for the trainman in the cupola to look towards the rear of the train. In other instances, it appears that it is customary for the trainman to place his head outside of the cupola window from time to time to examine the train. At such times he may look to the rear of the train.

General Order No. 114 provides minimum standards necessary to promote and safeguard the health and safety of trainmen but does not require that the facilities and supplies furnished by the railroads be uniform. Decision No. 62558 pointed out that the cabooses

and the arrangements within the cabooses operated by the several railroads, and even by an individual railroad, are not the same. The decision implies that requiring the railroads to replace cabooses that might otherwise provide reasonable and suitable facilities with some uniform type caboose would be unnecessary and unreasonable.

The matter of the windows on the sides of the cupolas is not a proper issue in this proceeding. We are here concerned only with the question of whether the contour seat proposed by Union Pacific provides equal or better protection and comfort than the seating prescribed in Section 7 of General Order No. 114. Section 10 of the general order provides that weatherstripping or weatherproof sash shall be installed and maintained at all windows and doors to protect against weather and the seepage of dirt or dust. If the window arrangement is such that the weatherstripping is ineffective or such that it in any other way endangers the health or safety of the trainmen, it will be considered by the Commission in a proceeding where that is an issue.

After consideration, we find that the contour seat proposed by applicant, and more particularly specified and depicted in Exhibits 1 and 2 herein, provides equal or better protection and comfort than the minimum requirements for pullman type seats specified in Section 7 of General Order No. 114. Applicant will be authorized to install the contour seats instead of the pullman type seats in the cupolas of its cabooses.

O R D E R

IT IS ORDERED that:

1. Union Pacific Railroad Company is authorized to install in the cupolas of its cabooses the seats specified in its application instead of pullman type seats.

2. All other requirements of General Order No. 114 shall remain in full force and effect with respect to cabooses used in service by applicant.

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

Dated at San Francisco, California, this 16th day of April, 1963.

George F. Grover  
President  
Edward W. Keag  
Frederick B. Holluff  
William W. Bennett  
Commissioners