

65276

**ORIGINAL**

Decision No. \_\_\_\_\_

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations and  
practices of SAN DIEGO and ARIZONA  
EASTERN RAILWAY COMPANY, a corpora-  
tion, with respect to the use in  
service of cabooses in conformity  
with provisions of General Order  
No. 114.

Case No. 7498

Wm. R. Denton, for San Diego and Arizona Eastern  
Railroad Company, respondent.

Geo. W. Ballard, for Brotherhood of Railroad  
Trainmen; Leonard M. Wickliffe, for California  
State Legislative Committee, Order of Railway  
Conductors and Brakemen, interested parties.

Hugh N. Orr, Claude D. Carlock, and Clent E. Milne,  
for the Commission staff.

O P I N I O N

This investigation was instituted by the Commission on  
December 4, 1962 and was heard before Examiner Thompson at Los  
Angeles on January 17, 1963 when it was submitted.

The principal issue here is whether respondent has oper-  
ated 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 require-  
ments 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. Certain requirements were to be  
fulfilled prior to October 2, 1962; others, which involve major

reconstruction of cabooses, are to be met by October 2, 1963. We are concerned here only with the former.

Respondent is a wholly owned and controlled subsidiary of the Southern Pacific Company. It has six cabooses which have been acquired from the parent company and which apparently have had many years of service.

A member of the Safety Section of the Commission made an inspection of five of the cabooses on October 23, 1962. Four of the cabooses were in service and one was not. He testified concerning the inspections he had made. The legislative representative of the California State Legislative Committee, Order of Railway Conductors and Brakemen inspected two cabooses operated by respondent on October 23, 1962 and testified concerning those inspections. The superintendent of respondent testified concerning the operations of the cabooses and the condition of said cabooses as of the date of hearing.

All of the cabooses are of the cupola type and on and after October 2, 1962 were required to be equipped with wind deflectors on the side windows of the cupola before being placed in service. All of the cabooses are equipped with what is commonly called the old style water tanks.<sup>1/</sup> Said facility consists of two tanks joined together under a single cover, each tank having a spigot from which water flows into a fixed basin. The spigots are no further apart than 8 inches. One spigot provides drinking water and

---

<sup>1/</sup> A type of the old style tanks is shown in picture number XIII in Exhibit 4 in Case No. 7002.

the other provides water for lavatory purposes. Section 14 of General Order No. 114 requires that facilities for the washing of hands and face shall be provided at a location where the use thereof will not result in contamination of the drinking water dispensing system. While the evidence herein does not show that the drinking water dispensing system was in fact contaminated, nevertheless, the nature of the installation and the proximity of the spigot with the basin used for lavatory purposes creates a condition whereby the use of the lavatory facility may result in the contamination of the drinking water system. We find that said facility does not comply with the requirements of Section 14 of General Order No. 114.

Section 8 of General Order No. 114 provides that each caboose shall have at least one bunk of not less than 24 inches in width and not less than 72 inches in length which shall be provided with a cushion of the same dimensions made of shock absorbent material initially of at least three inches in thickness. Bunk cushions measuring less than 24 inches in width do not comply with this provision.

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 dust. When weatherstripping has been installed but has become loose, worn or otherwise ineffective against seepage of dirt or dust, the requirements of Section 10 are not met.

We find that:

1. Respondent was served with a copy of Decision No. 62558 (General Order No. 114) on September 20, 1961 and at all times subsequent thereto had knowledge of the requirements of said order.

2. Respondent used Caboose No. S.P. 55 in service in the State of California subsequent to October 2, 1962, and more particularly on October 23, 1962; the bunk cushion on said caboose was 20 inches in width, there were no wind deflectors on the cupola, and there was no weatherstripping on the windows.

3. Respondent used Caboose No. S.P. 734 in service in the State of California subsequent to October 2, 1962, and more particularly on October 23, 1962 between San Diego and North Island; the bunk cushion on said caboose was 20 inches in width, there was no weatherstripping on the windows, there were no wind deflectors on the cupola and the facilities for the washing of hands and face were located where the use thereof could result in contamination of the drinking water dispensing system.

4. Respondent used Caboose No. S.P. 610 in service in the State of California subsequent to October 2, 1962, and more particularly on October 23, 1962 between San Diego and El Centro; the bunk cushion measured 69 inches in length and 18 inches in width, there were no wind deflectors on the cupola and the facilities for the washing of hands and face were located where the use thereof could result in contamination of the drinking water dispensing system.

5. Respondent used Caboose No. S.P. 897 in service in the State of California subsequent to October 2, 1962, and more particularly on October 23, 1962 between El Centro and Plaster City; the bunk cushion

was 20 inches in width, there were no wind deflectors on the cupola, there was no weatherstripping on the windows, there were no shades on five windows including the windows on the doors, the first aid kit had one bandage and one tube of ointment and the facilities for the washing of hands and face were located where the use thereof could result in contamination of the drinking water dispensing system.

6. Respondent used Caboose No. S.P. 869 in service in the State of California on January 2, 1963 between San Diego and the Mexican border; there was no weatherstripping on the windows and the facilities for the washing of hands and face were located where the use thereof could result in the contamination of the drinking water system.

7. The conditions recited in paragraphs 2 through 6 above do not comply with the requirements of General Order No. 114.

8. At various times subsequent to October 23, 1962, respondent made the following corrections:

Caboose No. S.P. 55 - Installed wind deflectors and weatherstripping.

Caboose No. S.P. 610 - Installed wind deflectors.

Caboose No. S.P. 397 - Installed bunk cushion 24 inches in width and replenished first aid kit.

Respondent's superintendent testified that he expected to receive replacement cabooses from the parent company in the near future and when that occurs the present ones will be retired. He has ordered bunk cushions of the proper size for all cabooses as well as weatherstripping but they have not yet been received. We take official notice of Application No. 45132 filed by respondent on January 23, 1963 for authority to depart from Section 9(b) of General Order No. 114 so as not to be required to install or maintain wind deflectors on the cupolas of its cabooses.

Respondent has failed to comply with the provisions of General Order No. 114. While the cabooses it presently operates may be of such age and condition as to make uneconomical the modifications required by the general order, that was within the knowledge of respondent on September 21, 1961 and it has had sufficient time to take action to acquire newer equipment. The evidence indicates that it was not until sometime after the Commission staff inspected the cabooses on October 23, 1962 that respondent had done anything to attempt compliance with the general order or to seek authority from the Commission for relief from whatever requirements it deems to be overly burdensome.

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

ORDER

IT IS ORDERED that San Diego and Arizona Eastern Railway Company, a corporation, shall cease and desist from failing to comply with any of the requirements of General Order No. 114.

The Secretary of the Commission is directed to cause a certified copy of this order to be personally served upon respondent.

The effective date of this order shall be twenty days after completion of such service.

Dated at San Francisco, California, this 23<sup>rd</sup> day of APRIL, 1963.

*[Signature]* President  
*[Signature]*  
*Frederick B. Hallock*  
*William W. Donald* Commissioners