

ORIGINALDecision No. 65336

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BROTHERHOOD OF RAILROAD TRAINMEN,)

Complainant)

vs.

Case No. 7251

SOUTHERN PACIFIC COMPANY
a corporation,

Defendant.)

Investigation on the Commission's
own motion into the operations and
practices of SOUTHERN PACIFIC
COMPANY in connection with the use
of radio communications in rail-
road operation.Case No. 7297
(Amended)George W. Ballard, for Brotherhood of Railroad
Trainmen AFL-CIO, complainant in Case No. 7251,
interested party in Case No. 7297.William R. Denton, for Southern Pacific Company,
defendant in Case No. 7251, respondent in
Case No. 7297.William V. Ellis, for California State Legislative
Board, Brotherhood of Locomotive Firemen &
Engineermen; Leonard M. Wickliffe, for California
State Legislative Committee Order of Railway
Conductors and Brakemen; G. R. Mitchell, for
Brotherhood Locomotive Engineers; D. M. Geil and
Harry C. Gorman, for American Train Dispatchers
Association; Carl R. Pressly and Warren E.
Fisher, for The Order of Railroad Telegraphers,
interested parties.Hugh N. Orr and Ted E. Rogers, for the Commission
staff.O P I N I O N

Case No. 7251 is a complaint by the Brotherhood of
Railroad Trainmen against the Southern Pacific Company which alleges
that on April 21, 1961 Southern Pacific violated General Order

No. 110 by effecting the movement of a train, contrary to train orders in force, by the use of radio.^{1/} Case No. 7297 is an investigation on the Commission's own motion to determine whether Southern Pacific violated General Order No. 110 on March 1, 1961 and August 3, 1961 by effecting train movements, contrary to train orders in force, by the use of radio. The two matters involve the same incident which occurred on March 1, 1961 and deal with questions concerning the use of radio facilities in the movement of trains. These Cases were consolidated for hearing because they relate to the same subject matter.

A duly noticed hearing was held in these consolidated matters before Commissioner Fox and Examiner Jarvis at San Francisco on August 1, 2, 3 and October 10, 1962. The matter was submitted subject to a late-filed exhibit. The late-filed exhibit was to be the question and answer book which Southern Pacific uses to conduct examinations on its rules. Since the exhibit would become a public record and thereby jeopardize Southern Pacific's rules examination program, all the parties stipulated that Southern Pacific could file excerpts of all questions and answers dealing with the rules involved in these consolidated proceedings. The late-filed exhibit was filed on February 19, 1963 and these consolidated matters were submitted on that date.

Findings of Fact

The Commission finds the facts involved to be as hereinafter stated.

^{1/} The record discloses that the incident in question actually took place on March 1, 1961.

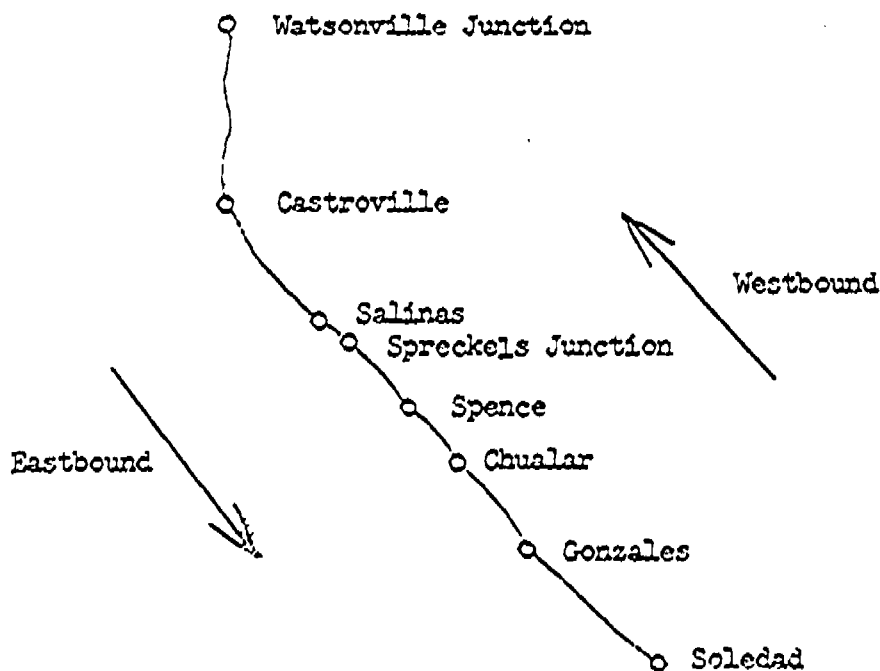
The rules of Southern Pacific provide that "A train is superior to another train by right, class or direction. Right is conferred by train order; class and direction by timetable. Right is superior to class or direction. Direction is superior as between trains of the same class."^{2/} "Extra trains are inferior to regular trains."^{3/} General Order No. 110 in part provides that "Radio communication shall not be used in the movement of trains in conflict with any rules and regulations of the operating department, timetable or special instructions in effect on any railroad." General Order No. 110 also provides that no railroad shall employ radio communication to transmit train orders directly to any train or engine crew or any person on a train or engine without filing with the Commission such intention and the procedure for such operation on or before the date of placing such operation in effect. The provisions of this condition shall not apply in cases of emergency involving the safety of trains or in the movement of trains during emergency conditions created by storm, flood, earthquake, derailment, or wreck, or to any railroad having issued prior to the effective date of this order, rules and regulations of the operating department, bulletins or special instruction permitting the radio transmission of train orders directly to any train.

The March 1, 1961 occurrence took place between Spence and Salinas on the Salinas Subdivision of Southern Pacific's Coast Division. The particular territory here involved has a single track

^{2/} S. P. Rule No. S-71.

^{3/} S. P. Rule No. 73.

line over which trains are operated by timetable, train orders and automatic block signals. A diagram of the area is set forth as Figure 1 which follows:



The trains involved in the March 1st occurrence were Train 922, which was designated in the timetable as a second class east-bound freight train, and Extra 1532 West, which was authorized to operate by a train order. Under Southern Pacific's operating rules Train 922 was superior to Extra 1532 West, unless otherwise provided, and Extra 1532 West was required to be clear of the main track at an appropriate time and place to permit Train 922 to proceed on schedule. However, train orders were issued to the two trains to modify their relative superiority. Train Order 336 directed that "Engine 1532 run Extra Salinas to Castroville, then run Extra Castroville to Soledad, and return to Salinas." Train Order 339 in part directed that ". . . 922 wait at Salinas until 4:45 p.m., Spreckels Junction 4:50 p.m., Chualar 5:05 p.m., and Gonzales 5:15 p.m. for X1532W." As a result of these train orders, Extra 1532 West was required to be

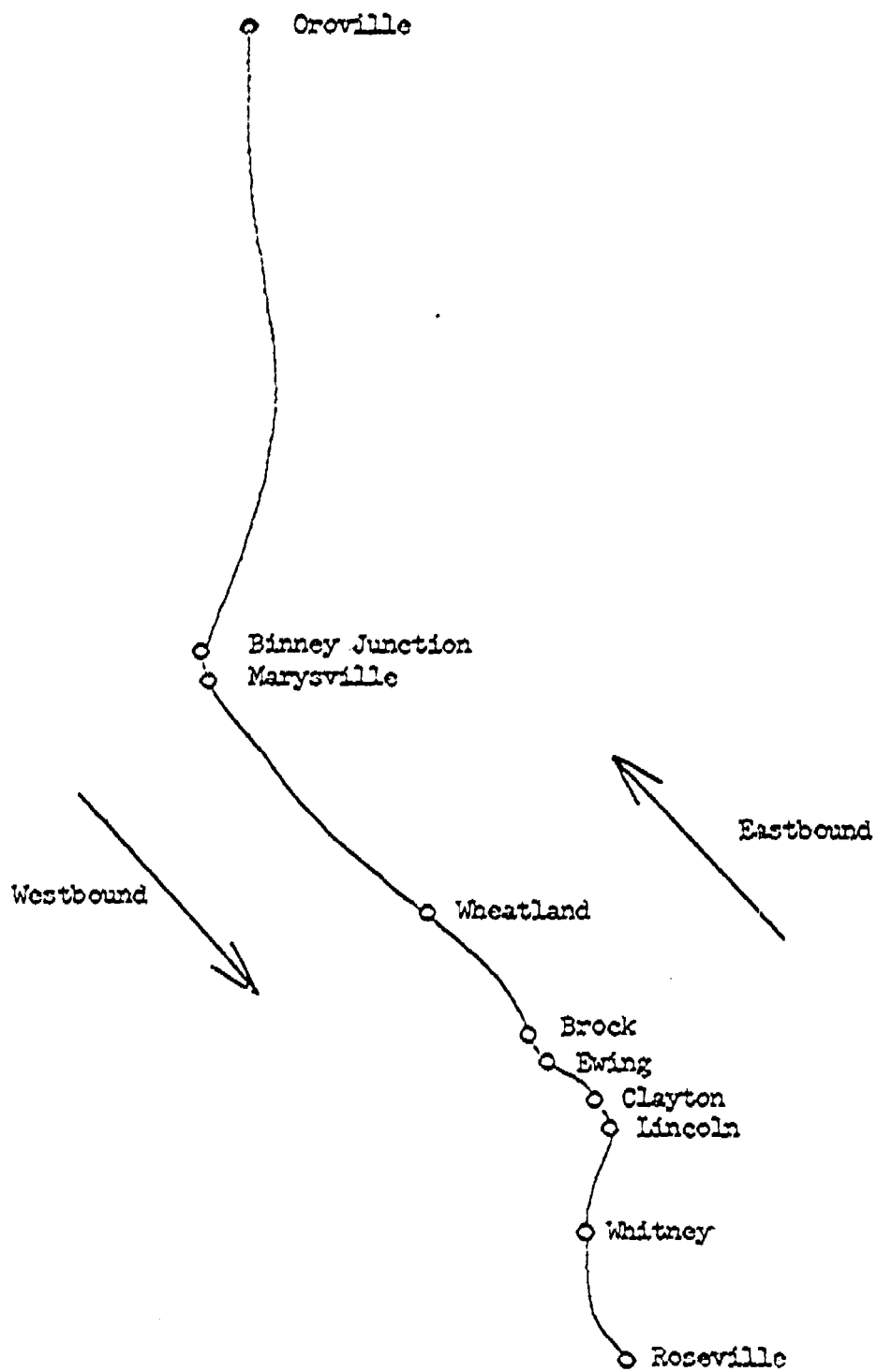
clear of the main track at Salinas by 4:45 p.m. or at one of the other stated locations at the time specified in the order to permit Train 922 to proceed.

Some time prior to 4:45 p.m. the assistant trainmaster at Salinas, Mr. Goodwill, determined that Extra 1532 West was at Spence (seven miles from Salinas) and that Train 922 was delayed at Watsonville (18 miles from Salinas) and would not depart from there until approximately 5:10 p.m. The running time between Watsonville and Salinas is approximately 25 minutes. Train 922 was expected to arrive in Salinas at 5:35 p.m. Under the foregoing train orders it was necessary for Extra 1532 West to remain at Spence until Train 922 had passed. If the train orders had been followed, it is estimated that Extra 1532 West would have arrived in Salinas at approximately 6:15 p.m. However, Trainmaster Goodwill wanted Extra 1532 West to be at Salinas prior to 5:30 p.m. primarily so that he could have Engine 1532 available for a switch crew which was coming on duty at 5:30 p.m.

At approximately 4:45 p.m. Trainmaster Goodwill himself set up physical flag protection on the main track at Salinas to protect Extra 1532 West against Train 922. After the flag was established, Trainmaster Goodwill by means of radio communication informed the crew of Extra 1532 West that the flag protection had been provided and instructed Extra 1532 West to proceed to Salinas. Extra 1532 West arrived at Salinas and cleared the main track at 5:00 p.m. This was 15 minutes later than provided for in Train Order 339, which had not been changed. Train 922 actually arrived at Salinas at 5:33 p.m.

The August 8, 1961 occurrence took place between Lincoln and Ewing on the East Valley Subdivision of Southern Pacific's Sacramento Division. The particular territory here involved has a single track line over which trains are operated by timetable, train

orders and automatic block signals. A diagram of the area is set forth as Figure 2 which follows:



The trains involved in the August 8th occurrence were Train 498, which was designated in the timetable as a third class eastbound freight train, and Extra 1347 West which was authorized to

operate by a train order. Train 498 was superior to Extra 1347 West. However, Train Order 57 provided that "Engine 1347 run Extra Marysville to Lincoln has right over No. 498 Marysville to Lincoln". Train Order 57 thus reversed the superiority of the two trains between Marysville and Lincoln. Extra 1347 West was authorized to proceed from Marysville to Lincoln before clearing the main track for Train 498. Train 498 was required to wait at Lincoln until Extra 1347 West cleared the main track at Lincoln.

On the evening of August 8th the trainmaster at Roseville, Mr. Hart, was out in his territory to check on a train not here involved. Trainmaster Hart was driving a radio-equipped automobile on U. S. Highway 99E, which, for the most part, parallels the Southern Pacific's tracks between Roseville and Marysville. As Trainmaster Hart passed the station at Whitney he observed Train 498 standing still. The engineer of Train 498 knew that Trainmaster Hart was in the area and contacted him by means of radio. The engineer told Trainmaster Hart that Train 498 would experience an excessive delay waiting at Lincoln for Extra 1347 West and asked Trainmaster Hart to alleviate the situation. The engineer of Train 498 also informed Trainmaster Hart that Train 498 had a D-F car (boxcar) which had been ordered by a shipper at Clayton seven days earlier. The boxcar was supposed to have been in place for loading on the morning of August 8. During the radio conversation between the engineer and Trainmaster Hart the train order operator at Lincoln joined in the conversation and corroborated the facts about the boxcar. At this time Trainmaster Hart had no knowledge of the train orders under which Train 498 and Extra 1347 West were operating. He advised the engineer of Train 498 that he would attempt to do something about the

situation. Trainmaster Hart proceeded to Lincoln where he stopped and talked to the train order operator who informed him of the train orders under which the two trains were operating. He also contacted the trick train dispatcher by telephone and was advised that Extra 1347 West had right of track over Train 498 to Lincoln. Trainmaster Hart and the dispatcher discussed the question of spotting the boxcar at Clayton. It was determined that the spur track at Clayton opened from the west end, and that the usual way to spot it would be to have it done by a westbound train--in this instance Extra 1347 West. Trainmaster Hart and the dispatcher determined that Extra 1347 West was at the Wheatland station. There was no train order operator at any point between Wheatland and Clayton so that Extra 1347 West could be reached by train order. Trainmaster Hart decided to try and physically flag Extra 1347 West at Ewing to enable Train 498 to drop the boxcar in a position so it could be spotted by Extra 1347 West and to enable Train 498 to proceed on its schedule. Trainmaster Hart informed the dispatcher of his plan and the dispatcher said "go ahead". Trainmaster Hart called the engineer of Train 498 by means of radio and told him that he would try to flag Extra 1347 West at Ewing and to stop at Lincoln pending further instructions. While en route from Lincoln to Ewing, Trainmaster Hart contacted Extra 1347 West by means of radio, ascertained that the train was about to depart from Wheatland and told the engineer that he would physically flag Extra 1347 West at Ewing. When Trainmaster Hart arrived at Ewing he established a physical flag on the main track. Extra 1347 West stopped for the physical flag established by Trainmaster Hart at Ewing and he signaled the engineer of Extra 1347 West to take a position in a siding at Ewing. Trainmaster Hart then contacted

Train 498 by means of radio and told the engineer to proceed to Ewing. Train 498 proceeded to Ewing, cut off the boxcar and proceeded on its schedule. Train 498 departed from Lincoln at 10:30 p.m. on August 3, 1961 prior to the arrival of Extra 1347 West.

Contentions of the Staff, Complainant, and Brotherhoods which appeared as interested parties.

The Commission staff, complainant, and interested parties contend that each of the two foregoing occurrences was a violation of General Order No. 110 which in part provides that: "Radio Communication shall not be used in the movement of trains in conflict with any rules and regulations of the operating department, timetable or special instructions in effect on any railroad." It is then argued that Southern Pacific's operating Rule 220 in part provides that "Train orders once in effect continue so until fulfilled, superseded, or annulled; that the two movements were contrary to Southern Pacific's operating rules; and that the use of radio to effectuate these movements was a violation of General Order No. 110. The staff, complainant, and interested parties contend that the train orders here involved could only have been superseded by the issuance of additional train orders or by a flagging procedure in accordance with Southern Pacific's operating Rule S-99-B, which provides as follows:

"When a flagman is sent with specific instructions affecting the superiority of an opposing train such instructions must be in writing on the prescribed form. When sent by train, he must ride on the engine and show the flagging order to the engineer who must let him off at the point at which opposing train is to be restricted.

"Flagging instructions must be written in duplicate, one copy given to the flagman and the other retained by the conductor, or engineer if no conductor, until movement is completed, and then mailed to the Superintendent. Flagging orders issued by conductor must be shown to his engineer.

"An engineer must not carry a flagman flagging against an opposing train, unless he presents his flagging instructions written on prescribed form. After reading the flagman's hold order, engineer must return it to the flagman and flagging order must be delivered to engineer of the restricted train."

It is argued that since Rule S-99-B is a specific flagging rule providing for the movement of an inferior train against a superior train, general rules dealing with a flagging cannot be used in such an instance. (*Expressio unius est exclusio alterius.*)

The staff, complainant, and interested parties also contend that the train dispatcher is the only person within a territory whose job it is to know at all times the location of each train in the territory; that only a dispatcher has authority to issue, supersede or annul train orders; that train orders are required to be issued in writing so that they will not be misunderstood; that train orders are of such importance that they are included among the written records which the Interstate Commerce Commission requires be preserved for a period of time; and that in train order territory^{4/} any movement which changes the previously established superiority of trains should be made, except in the case of an emergency, only pursuant to appropriate written instructions.

The complainant and interested parties further contend that if the superiority of trains may be changed without proper written instructions their members may be subject to criminal prosecution under Sections 7680 and 7681 of the Public Utilities Code which provide as follows:

^{4/} "In CTC territory (Central Traffic Control) signals govern train movements. No train orders are required and there is no superiority of trains. In designated double track areas, trains are operated in the same direction by block signals whose indication will supersede the superiority of trains."

Section 7680.

"Every conductor, engineer, brakeman, switchman, or other person having charge, wholly or in part, of any railroad, car, locomotive, or train, who wilfully or negligently suffers or causes it to collide with another car, locomotive, or train, or with any other object or thing whereby the death of a human being is produced, is punishable by imprisonment in the state prison for not less than one nor more than 10 years."

Section 7681.

"Every engineer, conductor, brakeman, switch-tender, or other officer, agent, or servant of any railroad company, who is guilty of any wilful violation or omission of his duty as such officer, agent, or servant, whereby human life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor."

They argue that Southern Pacific's operating rules should not be interpreted to authorize changing the superiority of trains without written instructions, except in the case of an emergency.

The Contentions of Southern Pacific

Southern Pacific contends that the two movements here under consideration were made under long established operating procedures within the purview of its rules. Southern Pacific argues that a flag is the highest authority on the railroad--higher than train orders or timetables; that the two movements were made under authority of flags; that the flagging procedure involved was made under authority of Southern Pacific's operating Rules 29, 29-A and 99; that radio communication was used in each instance to set up flag protection provided for by the operating rules; and that there was no violation of General Order No. 110. Rules 29, 29-A and 99 provide as follows:

29. "When a signal is given by hand, flag or lamp to stop a train, it must be acknowledged by signal 14(g), and unless proceed signal is received reason for stopping the train must be made known to engineer before train proceeds."

29-A. "When the cause for a flagman's signal is fully explained, to the engineer, and circumstances do not require the train to stop, it may proceed, being governed by the instructions of the flagman."

99. "When a train is moving under circumstances in which it may be overtaken by another train, the flagman must drop lighted fuses at proper intervals and take such other action as may be necessary to insure full protection.

"Except as prescribed in Rule 99-A, when a train stops under circumstances in which it may be overtaken by another train, the flagman must go back immediately with flagman's signals a sufficient distance to insure full protection, placing a torpedo and, when necessary, in addition, displaying lighted fuses. When recalled and safety to train will permit, he may return, and he will leave the torpedo, and if conditions warrant also leave a lighted fusee.

"When a train stops under circumstances in which it may be overtaken by another train, the engineer will immediately signal the flagman to protect the rear. When ready to proceed he will recall the flagman.

"The front of the train must be protected in the same way when necessary by the brakeman, or by the fireman if brakeman not available.

"Conductors and engineers are responsible for the protection of their trains or engines.

"The train must be protected in the same manner before fouling main track when protection by flagman is required as prescribed by Rules 81 and 513. Engineer or conductor at the fouling point must know that such protection has been provided."

Analysis of the Various Contentions

Section 7677.1 of the Public Utilities Code provides that:

"Radio or other means of communication not hereinabove referred to in Section 7677 may be used for the purpose of transmitting orders for the movement of trains, subject to such rules or regulations as the commission may promulgate for insuring the safety of railroad operations." 5

5/ Section 7677 provides as follows:

"No person, firm, or corporation operating a railroad with more than four trains each way every 24 hours shall require or permit any engineer, fireman, conductor, brakeman, or trainman to receive, deliver, or transmit at any receiving or forwarding instrument of any telegraph or telephone line, any order for the movement of any train, except in such cases or classes of cases as are permitted by the commission. This section does not apply to interurban or street railroads. Any person, firm, or corporation violating this section is guilty of a misdemeanor."

Section 7677.1 indicates that the Legislature is concerned about the use of radio communication for the purpose of transmitting orders for the movement of trains. It has authorized this Commission to promulgate rules for the safety of such operations. General Order No. 110 has established rules for the use of radio communications in the movement of trains.

It is possible under General Order No. 110 for any railroad, subject to applicable statutes and the supervisory powers of the Commission, to promulgate operating rules involving the use of radio communications in connection with train movements. However, unless such operating rules have been put into effect radio communications cannot be used in conflict with existing operating rules.

Operating rules are established to promote the safe and efficient operation of railroads. The operating rules of railroads throughout the United States are based upon the "Standard Code of Association of American Railroads" and are substantially similar. Southern Pacific train crew members are required to be familiar with the operating rules, and a Rules Instruction Car is provided for employees to obtain instruction on the rules. Promotions to certain positions require passing a test on the operating rules. To insure the safety of train movements the rules must be understood and interpreted in the same manner by all personnel involved.

Rules 29 and 29-A instruct an engineer on the procedure to be followed when his train has been physically flagged. Nothing in these two rules indicates the circumstances in which a flag may be established. The critical question is whether Rule 99 is to be

utilized solely for the protection of trains or whether it may also be used to effectuate the movement of trains.^{6/} Rule 99 contains six paragraphs and each will be separately considered.

Paragraph 1 of Rule 99 provides that:

"When a train is moving under circumstances in which it may be overtaken by another train, the flagman must drop lighted fuses at proper intervals and take such other action as may be necessary to insure full protection."

This paragraph was not applicable to the two instances here under consideration because in neither case was a train moving under circumstances in which it might be overtaken by another train.

Paragraph 2 of Rule 99 provides that:

"Except as prescribed in Rule 99-A, when a train stops under circumstances in which it may be overtaken by another train, the flagman must go back immediately with flagman's signals a sufficient distance to insure full protection, placing a torpedo and, when necessary, in addition, displaying lighted fuses. When recalled and safety to train will permit, he may return, and he will leave the torpedo, and if conditions warrant also leave a lighted fusee." ^{7/}

^{6/} The record discloses that in the Lincoln-Ewing incident Trainmaster Hart did not place a torpedo on the rail. There is a question of whether Rule 99 was properly followed even assuming that it was applicable to the situation. The Commission will not pass upon this point because the important question is whether Rule 99 was applicable to the situation.

^{7/} Rule 99-A provides that:

"When rear of train is standing within yard limits, flag protection to the rear is not required against second- and inferior class trains, extra trains and engines.

"When a train stops within block system limits, with protection of at least two block signals to the rear, flagman must go back immediately with flagman's signals a sufficient distance to insure full protection against following trains moving at restricted speed, except when rear of train is standing between opposing absolute signals at a station, or is within interlocking limits, flag protection to the rear is not required.

"During station stops flagman of a train carrying passengers must take position not less than thirty feet behind rear car, except when necessary to go farther to afford protection.

"When protection is to be afforded for other than a train or engine and where conditions may interfere with the safe passage of trains or engines at normal speed, flagman must provide protection in accordance with second paragraph of Rule 99."

None of the trains here involved was stopped under circumstances where it might have been overtaken by another train.

Paragraph 3 of Rule 99 provides that:

"When a train stops under circumstances in which it may be overtaken by another train, the engineer will immediately signal the flagman to protect the rear. When ready to proceed he will recall the flagman."

Paragraph 4 of Rule 99 provides that:

"The front of the train must be protected in the same way when necessary by the brakeman, or by the fireman if brakeman not available."

This paragraph, interpreted broadly, means that when a train is stopped or moving under circumstances where it will meet an oncoming train it must be protected in the manner specified in paragraph 2. However, under the train orders in effect in the two instances here in question there was no need to protect the front of any of the trains. In the Spence-Salinas incident Extra 1532 West was required by its train orders to be clear of the main track at Spence until Train 922 passed. If Extra 1532 West had followed its train orders and cleared the main track by entering a siding at Spence no flag protection was necessary. In the Lincoln-Ewing incident Train 498 was required by its train orders to wait at Lincoln until Extra 1347 West cleared the main track by entering a more easterly

siding at Lincoln. If the train orders had been followed no flag protection was necessary.

Paragraphs 5 and 6 of Rule 99 provide that:

"Conductors and engineers are responsible for the protection of their trains or engines.

"The train must be protected in the same manner before fouling main track when protection by flagman is required as prescribed by Rules 81 and 513. Engineer or conductor at the fouling point must know that such protection has been provided."

Neither paragraph is applicable to the facts here under consideration.

Southern Pacific's superintendent of transportation, who has supervision over the instructing and examining of employees on the work rules, testified that the movements here involved were by the "application or the implication of the three rules [29, 29-A and 99] tied together", and that "It's only a matter of judgment and common sense" when these rules can be applied to suspend train orders which are in effect. As indicated, Rules 29 and 29-A cannot be construed to authorize flagging. If Rule 99 be construed, contrary to its plain wording, to permit the modification of existing train orders when no emergency affecting a train exists, an unsafe

operating procedure results. Train orders could be "suspended" by company officers and operating employees without knowing which trains were operating in the territory and without the knowledge of the dispatcher. Furthermore, Southern Pacific's operating rules have specific provisions for modifying or superseding train orders and for the sending of a flagman with written flagging orders affecting the superiority of a train. Nowhere do the Southern Pacific's operating rules provide for the "suspension" of train orders by flagging.

The Supreme Court of Illinois had occasion to consider Rule 99 of the Chicago Great Western Railway Company, which is substantially similar to Southern Pacific's Rule 99, in Chicago Great Western Ry. Co. v. Illinois Commerce Commission, 75 N.E. 2d 318.⁸⁷

⁸⁷ Rule 99 of the Chicago Great Western Railway Company provides as follows:

"When a train stops under circumstances in which it may be overtaken by another train, the flagman must go back immediately with the flagman's signals a sufficient distance to insure full protection. One-fourth of a mile from the rear of his train he will place one torpedo on the rail, continuing back an additional one-fourth mile where he will place two torpedoes on the rail, three rail lengths (100 feet) apart. He will then return to the single torpedo where he will remain until relieved by another flagman or is recalled by the whistle of his engine. When whistle signal has been given to recall the flagman, and safety to the train will permit, he may return after leaving the one torpedo. When the conditions require he will leave a lighted fusee.

"During foggy or stormy weather and in the vicinity of obscure curves or descending grades, or when other conditions require it, the flagman will increase the distance, placing two torpedoes at every one-fourth mile after having placed the one.

"The front of the train must be protected in the same way when necessary.

"Should a train be seen or heard approaching before the flagman has reached the required distance, he must at once place one torpedo on the rail and, if it is by night or during foggy or stormy weather, he must display a lighted fusee in addition and continue in the direction of the approaching train.

"If the flagman is recalled before reaching the required distance he will, if necessary, place two torpedoes on the rail, three rail lengths (100 feet) apart by day and, by night or during foggy or stormy weather, display a lighted fusee in addition, to protect his train while returning.

"When a train is moving under circumstances in which it may be overtaken by another train the flagman must take such action as may be necessary to insure full protection. By night, or by day when the view is obscured, lighted fusees must be thrown off at proper intervals."

The Illinois Supreme Court concluded that the rule was a protective one and that the language therein relating to stopped trains "relates to unusual stops not contemplated, or provided for, such as may be caused by accident or mechanical failure between stations, and the like." (75 N.E. 2d 323.) The Commission deems this construction of Rule 99 to be correct and it is consonant with the reasoning heretofore set forth.

The Commission is of the opinion that Rule 99 is a protective rule, and it should not be used to effectuate the movement of trains operating under train orders where no emergency involving the safety of trains exists and the trains are protected by the train orders in effect. If Southern Pacific desires to use flagging procedures to "suspend" train orders in situations where no emergency involving the safety of trains exists, it should publish appropriate operating rules.

The Commission makes the following additional findings of fact:

1. The construction by Southern Pacific of the meaning of its operating Rule 99 is one contrived for the purpose of its defense in these proceedings.
2. Southern Pacific's operating Rule 99 is a protective rule and should be so construed and applied by Southern Pacific and all of its operating personnel.
3. The use of Southern Pacific's operating Rule 99 to effectuate the movement of trains operating under train order or timetable authority where no emergency involving the safety of trains exists is unsafe and improper.

4. The safety of Southern Pacific's employees, passengers, customers and the public requires that Southern Pacific should not utilize its operating Rule 99 to effectuate the movement of trains operating under train order or timetable authority where no emergency involving the safety of trains exists.

5. On March 1, 1961 Southern Pacific violated General Order No. 110 by effecting the movement of train Extra 1532 West from Spence to Salinas by radio communication in conflict with its operating rules and regulations, timetable and special instructions in effect on that date. At the time of said movement there was no emergency involving the safety of trains nor were there emergency conditions created by storm, flood, earthquake, derailment or wreck.

6. On August 8, 1961 Southern Pacific violated General Order No. 110 by effecting the movement of Train 498 from Lincoln to Ewing by radio communication in conflict with its operating rules and regulations, timetable and special instructions in effect on that date. At the time of said movement there was no emergency involving the safety of trains nor were there emergency conditions created by storm, flood, earthquake, derailment or wreck.

While the procedure used by Southern Pacific in the two incidents here involved was inherently unsafe, the movements were accomplished without accident. The Commission concludes that nothing further should be done about these incidents, but Southern Pacific should be ordered to cease and desist from utilizing such procedures in the future.

ORDER

IT IS ORDERED that:

1. Southern Pacific Company is ordered to cease and desist from utilizing its presently existing operating Rule 99 to effectuate the movement of trains operating under train order or timetable authority where there is no emergency involving the safety of trains nor emergency conditions created by storm, flood, earthquake, derailment or wreck.

2. Southern Pacific Company shall cease and desist from any further violations of General Order No. 110.

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

Dated at Los Angeles, California, this 7th day of MAY, 1963.

George A. Trover
President

Friedrich B. Halbach

Hallam M. Brund

Commissioner Everett C. McKeage, being necessarily absent, is Commissioners in the disposition of this proceeding.