

**ORIGINAL**

65375

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 PACIFIC ELECTRIC  
 RAILWAY COMPANY, a corporation,  
 with respect to the use in service  
 of cabooses in conformity with pro-  
 visions of General Order No. 114.

Case No. 7499

William R. Denton, for respondent.  
George W. Ballard, for Brotherhood of  
 Railroad Trainmen, AFL-CIO, interested  
 party.  
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 and submitted before Examiner Thompson at Los Angeles on January 17, 1963.

The principal issue here 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. 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 subsidiary of the Southern Pacific Company with operations in and about Los Angeles. It has 29 cabooses, most of which are leased from the parent company.

A member of the Safety Section of the Commission made inspections of 27 of the cabooses on October 24 and 25, 1962. He testified concerning the results of those inspections. A conductor for Pacific Electric Railway Company inspected 11 cabooses on January 10, 1963. He testified concerning those inspections and three photographs (Exhibits 2, 3 and 4), which he had caused to be taken at the time, showing the washing facility and the interior of the cupola of Caboose No. 253 and the toilet facility of Caboose No. 801. He also testified concerning the practices of the railroad with respect to the maintenance and repair of facilities on the cabooses. The vice president and general manager of respondent testified concerning the action taken by respondent in connection with General Order No. 114 and the conditions of the cabooses on the date of the hearing. We take official notice of Application No. 45159 filed February 4, 1963 by Pacific Electric Railway Company requesting an extension of time to October 2, 1963, within which to comply with Sections 3, 8 and 12 of General Order No. 114 and for an exemption from the provisions of Section 9(b) of said general order.

Sections 3, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of General Order No. 114 set forth the requirements which became effective October 2, 1962. A detailed description of the conditions of every caboose observed by the member of the Safety Section which are at variance with the requirements would be lengthy. The following summary sets forth a brief description of the requirements

in the sections referred to above and the number of cabooses which did not have the facilities required.

<u>Section No.</u>	<u>Requirement</u>	<u>No. Cabooses Not Having Required Facility</u>
3	Caboose trucks shall be equipped with steel wheels.	10
6	A heating facility shall be maintained.	1
8	Each caboose shall have at least one bunk of not less than 72 inches in length and 24 inches in width which shall have a cushion of the same dimensions.	24
9	Windows shall have safety glass.	0
9b	Cupolas shall have wind deflectors.	17
10	Windows and doors shall be weatherstripped or equipped with weatherproof sash.	25
11	Windows other than in cupolas and bays shall be equipped with shades.	15
12	Stanchions, grab handles or bars shall be installed at certain locations.	9
13	Drinking water facilities shall be installed and maintained so as to provide fresh and pure drinking water.	5
14	Lavatory facilities shall be provided at a location where the use thereof will not result in contamination of drinking water.	19
15	Cabooses shall be equipped with a fire extinguisher.	12
16	Each caboose shall have a fully equipped first aid kit.	16
17	Cabooses shall be supplied with fresh water, paper towels, drinking cups, fuel, ice and hand soap in an appropriate dispenser.	25

The total number of cabooses inspected was 27.

It should be pointed out that each and every one of the conditions tabulated above does not necessarily constitute a violation of General Order No. 114. Fire extinguishers are required only on cabooses used on road service, for example, and not on those used in switching service.

None of the cabooses inspected by the conductor met all of the requirements of General Order No. 114. Two of them were cabooses that had not been inspected by the member of the Safety Section. Those two, together with the 27 inspected by the Safety Section, constituted all of the cabooses operated by Pacific Electric Railway Company.

The vice president and general manager stated that although 29 cabooses are operated by respondent, 13 are used in service on runs having a one-way distance of less than 16 miles. It is his contention that those cabooses are exempt from the requirements of General Order No. 114. He stated that at the time General Order No. 114 was issued Southern Pacific Company embarked on a program of design and planning for new cabooses for its system and that as new cabooses are acquired for the heavy service, other cabooses which comply with the requirements of General Order No. 114 will be turned over to respondent by the parent company. He said that the respondent's cabooses would require extensive modification to meet the structural requirements of the general order and, "perhaps in an over-optimistic moment we felt that these 16 existing cabooses would be replaced prior to the expiration of the one-year period and consequently there was no need for asking exemptions at that time. Without belaboring the point, it is now

self-evident that the new cabooses were not acquired, that suitable equipment was not passed on to Pacific Electric and, consequently, many of the 16 units now being operated on this property may be in technical violation of portions of General Order No. 114."

The vice president and general manager stated that immediately prior to the hearing he personally inspected all of the cabooses. A summary of his testimony in connection with the requirements of the general order pertaining to respondent's cabooses follows:

Section 3. In his opinion there is absolutely no hazard in the operations of these cabooses without steel wheels and it would be an economic waste to equip them with steel wheels. Respondent will request an exemption from this provision.<sup>1/</sup>

Section 6. Caboose No. 1969, reported to be without a stove, is only operated in an inter-yard movement between the 8th Street yard and the Butte Street yard, a distance of approximately 2 miles. He stated that those operations do not make such caboose subject to the requirements of General Order No. 114.

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1/ Application No. 45159 filed February 4, 1963 by respondent requests the following:

1. An exemption from the requirement of Section 9(b) of General Order No. 114.
2. An extension of time until October 2, 1963 within which to comply with the following Sections of General Order No. 114:
  - Section 3 (Steel Wheels)
  - Section 8 (Bunk Cushions)
  - Section 12 (Stanchions and Grab Handles)

The application states, "Pacific Electric Railway Company plans to replace its cabooses before October 2, 1963, with newer and more modern cabooses at which time the cabooses now in service will be retired. Extensive structural changes in cabooses are not warranted now because of their impending retirement."

Section 8. Most of the cabooses have bunks which are 21 inches in width. The wooden bunk structure in most instances will not accommodate a 24-inch cushion. Modification of the present bunk structures would be costly. Respondent has instructed train crews to call a doctor and an ambulance when an employee is injured or becomes ill while on duty. Bulletins and timetables provide instructions concerning the calling of ambulances in the area served by respondent. Pacific Electric operates wholly within metropolitan areas where telephones are readily available and the trains are within short distances of doctors, ambulance services and hospitals at all times. Respondent will make application for exemption from this requirement.

Section 9(b). Because respondent operates through heavy metropolitan areas, it encounters a serious problem resulting from the throwing of rocks by children and adults. All side windows of the cabooses are covered with a heavy wire mesh screen in order to deflect the missiles. Respondent, therefore, does not require its trainmen to open the cupola windows to make inspections of the train. There is no need for the wind deflectors and respondent will file application for exemption from this requirement.

Section 10. Instructions have been given to equip the 16 cabooses used in operation for distances exceeding 16 miles with new weatherstripping on all doors and windows.

Section 11. Window shades were recently installed by respondent.

Section 12. The cabooses reported by the staff to be without stanchions or grab handles are those without cupolas. The roof structures of those cabooses are not sufficiently strong to hold a stanchion that might get a sudden pull. The installation of such stanchions would create additional hazards. The cabooses have been operated many years and respondent has not encountered problems arising from the lack of stanchions in the interior of those cabooses. Respondent will make application to be exempt from the requirements of Section 12.

Section 13. Drinking water facilities on respondent's cabooses are not used to any material extent. When trainmen desire those facilities, they are maintained; however, when a particular train crew does not desire to use them, the facilities get dirty.

Section 14. Arrangements have been made for drinking water containers to be kept at a considerable distance from the wash basin facility.

Section 15. Immediately following the issuance of General Order No. 114, the 29 cabooses were equipped with fire extinguishers. Practically all of those fire extinguishers have disappeared and all that remains are the mounting brackets and operating instructions. Additional fire extinguishers were recently obtained and have now been placed on the 16 cabooses used in service for distances exceeding 16 miles.

Section 16. Under the agreement between respondent and its trainmen, the latter have the responsibility to

see that the first aid kits are properly filled. It is difficult to police the maintenance of first aid kits; however, following his inspection the vice president and general manager assigned several men to fill the first aid kits on all cabooses.

Section 17. The maintenance of supplies for cabooses is the responsibility of the train crews. Respondent has supplies and containers available at several locations for issuance to the train crews.

The vice president and general manager's assertion that cabooses used in train service having a one-way distance of 16 miles or less are exempt from the provisions of General Order No. 114 is not correct. The exemption applies only to cabooses used as rider cars on yard transfer movements having a one-way route mileage of 16 miles or less. Cabooses used in local train service or road switcher service, regardless of distance of the movement, are subject to the requirements of the general order.

The evidence herein clearly shows that if the respondent did not totally ignore General Order No. 114, it certainly made no effort to comply with the requirements until after the instant proceeding was instituted on December 4, 1962. The management of respondent may have its opinions whether those requirements are necessary to promote and safeguard the health and safety of its train employees; however, regardless of management's opinions, respondent is required to comply with General Order No. 114. It was not until well after the compliance date of General Order No. 114 that respondent had done anything to attempt compliance with the



general order or to seek authority for relief from whatever requirements it deemed to be overly burdensome.

We find that:

1. Respondent was served with a copy of Decision No. 62558 (General Order No. 114) on or about September 21, 1961, and at all times subsequent thereto had knowledge of the requirements of said general order.

2. During the period October 2, 1962 to January 17, 1963 respondent conducted train operations daily and in connection therewith used cabooses in service which were subject to the requirements of General Order No. 114.

3. Respondent has a total of 29 cabooses, none of which fully complied with the requirements of General Order No. 114 during the period October 2, 1962 to January 17, 1963.

4. Respondent failed to comply with General Order No. 114.

Respondent will be ordered to cease and desist from future violations of General No. 114. As an additional sanction, the Commission will cause to be instituted appropriate penalty actions against respondent. It will also give consideration to the institution of a proceeding for contempt.

O R D E R

IT IS ORDERED that Pacific Electric 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 and the effective date of this order shall be twenty days after completion of such service.

Dated at San Francisco, California, this 14th day of MAY 1, 1963.

George J. Chover  
President

John S. Mitchell

Fredrick B. Halblaff

William W. Bennett

Commissioner Everett [unclear]  
necessarily absent. did not participate  
in the disposition of this proceeding.  
Commissioners