

ORIGINAL

65746

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

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The California State Legislative  
Committee of the Order of Railway  
Conductors and Brakemen, a labor  
Organization,

Complainant,

vs.

Southern Pacific Company,  
a corporation,

Defendant.

Case No. 7466

Investigation on the Commission's  
own motion into the operations and  
practices of SOUTHERN PACIFIC  
COMPANY, a corporation, with  
respect to the use in service of  
caboose in conformity with pro-  
visions of General Order No. 114.

Case No. 7495

Leonard M. Wickliffe, for California State Legislative  
Committee, Order of Railway Conductors and Brakemen;  
complainant and interested party.  
William R. Denton, for Southern Pacific Company;  
defendant and respondent.  
George W. Ballard and James E. Howe, for Brotherhood  
of Railroad Trainmen, AFL-CIO; interested party.  
Hugh N. Orr and Claude Carlock, for the Commission  
staff.

O P I N I O N

The complainant alleges that defendant is a common carrier  
by railroad and in conducting railroad operations violated General  
Order No. 114 subsequent to October 2, 1962 by using cabooses in  
service which were not equipped with certain facilities, equipment  
and supplies required by certain sections of said General Order.

The sections of the General Order specified in the complaint are: Sections 6, 8, 9a, 9b, 10, 11, 13, 14, 15, 16 and 17. Defendant in its answer admitted it is a common carrier by railroad and denied every other material allegation.

On December 4, 1962 the Commission, on its own motion, instituted an investigation into the operations and practices of Southern Pacific Company for the purpose of determining whether respondent has operated any caboose in service within the State of California since October 2, 1962 in violation of Section 1 of General Order No. 114 and whether respondent, since October 2, 1962, has operated in service within this State any caboose the construction or equipment of which does not conform to the requirements of Sections 3, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 or 17 of General Order No. 114.

The complaint and the investigation were consolidated for hearing and were heard and submitted before Examiner Thompson at San Francisco on January 22, 1963.

Southern Pacific Company, hereinafter sometimes referred to as respondent, is a railroad corporation as defined in Section 230 of the Public Utilities Code. On September 12, 1961 the Commission adopted, to become effective October 2, 1961, General Order No. 114 (Appendix A of Decision No. 62558 in Case No. 7002) which prescribes minimum safety, health and comfort requirements for cabooses operated by railroad corporations within the State of California. Certain requirements of the order, namely those listed in the complaint and in the order of investigation, 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.

The evidence presented by complainant consists of a summary statement prepared by its legislative representative of reports submitted to him by conductors employed by respondent concerning the conditions of certain equipment, facilities and supplies on cabooses used in service during the period October 3 to October 12, 1962, and the testimony of a conductor employed by respondent having a regular assignment on freight trains operating between Dunsmuir, California and Klamath Falls, Oregon regarding the equipment, facilities and supplies of cabooses used in service under the supervision of the witness on October 3, 4, 5, 6, 7 and 8, 1962, and on January 10, 12, 13, 14, 15, 16, 18 and 19, 1963.

The evidence presented by the Commission staff consisted of the testimony of an associate transportation supervisor concerning the conditions of cabooses he inspected at stations located at various points in California, extending from Napa Junction to Colton. Exhibit 3 is a summary report of his inspections which were made during the period October 23, 1962 to and including November 3, 1962.

Respondent's assistant general manager testified concerning the actions taken by respondent to improve its fleet of cabooses and regarding problems it has encountered in the installation and maintenance of certain facilities, equipment and supplies required by General Order No. 114.

The scope of the order instituting the investigation covers all of the material allegations in the complaint. We will

proceed to a discussion of the evidence relating to the several sections of General Order No. 114 listed in the aforementioned order of investigation.

Section 1 refers to the applicability of the General Order, exempts railroads conducting certain types of operation from certain requirements, and provides that no cabooses shall be used in service subsequent to one year after the effective date of General Order No. 114 unless it complies with Sections 3, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 thereof. Respondent has over 3,000 miles of main and branch line trackage in California. The evidence which will be discussed hereinafter will refer to cabooses which were used in service, other than as rider cars in yard transfer movements having a one-way route mileage of 16 miles or less. Our discussion of the evidence and our findings herein, therefore, will relate to cabooses used in service subsequent to one year after October 2, 1961 in operations to which the General Order is applicable.

Section 3 prescribes regulations governing the riding qualities of trucks and requires that they be equipped with steel wheels. There is no evidence whatever in this record concerning the trucks and wheels of cabooses operated by respondent other than a picture (Exhibit 4) which shows that Caboose No. 1401 has trucks which are equipped with elliptical springs.

Section 6 provides that a heating facility shall be maintained and shall be capable of providing a temperature of at least 70 degrees Fahrenheit in a standard caboose. The evidence consists of the testimony of complainant's representative that the reports received by him from conductors indicated that Caboose

No. 897 did not have a proper heating facility on October 2, 1962, Caboose No. 1148 was operated on October 5, 1962 without an adequate heating facility and Caboose No. 1091 was operated on October 2, 1962 without an adequate heating facility. He read from the report concerning Caboose No. 1091 which he said merely states, "Cold stove smokes. Bad damper. Bad order." The testimony is hearsay unsupported by other evidence.

Section 8 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. On November 1, 1962 the associate transportation supervisor inspected Caboose No. 1313 at respondent's Taylor Yard in Los Angeles. That caboose did not have a bunk. The witness stated that nine other cabooses had bunk cushions the widths of which ranged from 19 inches to 21 inches. The cabooses that had bunk cushions with widths less than 24 inches during the period October 23, 1962 to November 3, 1962 were Nos. 140, 1020, 1022, 1023, 1094, 1123, 1198, 1206 and 1213.

Section 9 provides that whenever glass is used in partitions, doors, windows or wind deflectors, it shall be of the safety glass type. The complainant's legislative representative testified that the reports he received from conductors with respect to window glass merely stated the conclusions that in some instances the windows were not of safety glass. There were no descriptions of the glass used in the windows nor were there explanations of the basis for such conclusions. The witness stated that he is a conductor employed by respondent and that the company ordinarily etches the

initial "SG" on safety glass but that he knows of many instances when safety glass without that etching has been installed on the windows of respondent's cabooses. The associate transportation supervisor testified that at the time he made his inspection he found that there were windows on 17 cabooses that were not marked with a symbol indicating that they were safety glass. He said that there was doubt in his mind that the windows were safety glass but without removing the panes from the sashes to measure the thickness of the glass he could not positively determine whether the windows were safety glass or single strength window glass. He testified that two of the cabooses had broken windows and that he considered those two instances to be violations of Section 9. He did not state whether the panes in those broken windows were safety glass. We point out here that Section 9 prohibits the use of glass other than safety glass but does not prohibit the use of a caboose with a broken window.

Section 9(b) requires cupola type cabooses to be equipped with a wind deflector on each side window of the cupola. Respondent operates cupola type cabooses and bay window type cabooses. The cupola type cabooses have numbers lower than 1235. Of the 53 cupola type cabooses inspected by the associate transportation supervisor only two were equipped with wind deflectors.<sup>1/</sup> No further discussion of the evidence concerning wind deflectors is necessary in that respondent's assistant general manager stated, "I'm sorry to say, we were awfully slow in beginning application of the deflectors."

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<sup>1/</sup> Exhibit 3 indicates that 54 cupola type cabooses were inspected; however, Caboose No. 1196 was inspected on October 30, 1962 at Roseville and on October 31, 1962 at West Oakland and both inspections were included.

Section 10 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. Exhibit 3 shows that of the 92 cabooses inspected by the transportation supervisor there were 61 which had conditions which in the judgment of the supervisor did not comply with the requirements of Section 10. In 49 instances, the deficiency reported was that the doors or windows did not fit tightly against the weatherstripping so that the latter was ineffective in protecting against weather and the seepage of dirt or dust. The remaining 12 cases reported are:

Cabooses Nos. 1006, 1172, 1146, 1214 and 1213 did not have the lower edges of the cupola windows weatherstripped.

Caboose No. 146 did not have any weatherstripping in the cupola windows.

Caboose No. 1327 had a pair of bay windows that were not weatherstripped.

Cabooses Nos. 1094 and 1206 had side windows that were only partially weatherstripped.

Caboose No. 1089 had no weatherstripping on one side window.

Caboose No. 1090 did not have weatherstripping on the cupola end windows or on the lower level side windows.

Caboose No. 1134 had the frame of one cupola window broken which made the weatherstripping ineffective.

In addition, the transportation supervisor reported that Cabooses Nos. 1198 and 1200 each had one side window which was too short for the frame. He considered those conditions to be violations of Section 17 of General Order No. 114. Such conditions, however,

result in the weatherstripping being ineffective against the weather and the seepage of dirt or dust. The evidence presented by the transportation supervisor was not refuted by respondent.

Section 11 provides that with the exception of windows in bays and cupolas, windows shall be equipped with shades. The evidence herein conclusively shows that in almost every instance, except for the window over the conductor's desk, the windows in respondent's cabooses were not equipped with shades. Respondent's assistant general manager testified that respondent is equipping cabooses with shades on all windows other than those in cupolas, bay windows and on doors at the ends of the cabooses. He stated that management is of the opinion that General Order No. 114 does not require the windows in the doors to be equipped with shades. We point out to respondent that Section 11 provides for only two exceptions to the requirement that windows in cabooses shall be equipped with shades. The exceptions refer only to windows in cupolas and in bays.

Section 12 provides that stanchions, grab handles, or bars shall be installed at entrances and exits and at other locations within convenient reach of employees moving about the caboose while a train is in motion. The transportation supervisor reported that 13 of the cabooses he inspected did not have a stanchion, grab handle or bar within convenient reach of an employee in the interior of the cabooses at the exit at one end of the cabooses. The cabooses with said deficiency were Nos. 1235, 1296, 1311, 1313, 1321, 1327, 1336, 1337, 1342, 1343, 1347, 1363 and 1367. Those cabooses were all of the cabooses inspected by the supervisor that had serial numbers from 1235 to 1400. The evidence indicates that said cabooses were the



first of a series of bay window type cabooses acquired by respondent. The ends of the cabooses where there is no stanchion, grab handle or bar is where there is a toilet adjacent to the exit. The transportation supervisor stated that because of the construction of that type caboose there is not enough clearance or room to install a grab handle or stanchion at the exit but there is sufficient clearance for a longitudinal bar above the door extending the length of the caboose similar to the type installed by respondent on the 1400 and 1500 series cabooses. He did not investigate further into the ability of the structure of the 1300 series cabooses to withstand the installation of such a bar. Respondent did not offer evidence of whether or not such a bar could be installed on those cabooses.

Section 13 provides "Drinking water facilities shall be installed and maintained so as to provide fresh and pure drinking water. When ice is used for water cooling purposes, the containers shall be so arranged that the drinking water will not come in contact with the ice. Containers used for storing water shall be kept clean at all times and shall be subjected to effective bactericidal treatment as often as may be necessary to prevent the contamination of the water so stored and dispensed." The testimony of the conductor and of the assistant general manager shows that respondent has encountered a problem in the water dispensing facilities on the 1400 and 1500 series cabooses. There is no need to fully describe the problem other than to say that respondent installed what appeared to be an excellent water dispensing system which became inoperative under certain conditions because of engineering problems with the mechanical cooling unit. Respondent has taken steps to improve the

situation by replacing the type of cooling unit that caused the problem. Other than conditions reported with respect to the water dispensing facilities on series 1400 and 1500 cabooses the evidence shows the following conditions: The drinking water containers on Cabooses Nos. 558, 140, 1094, 1089, 1023, 1022 and 1123 consist of a cylindrical metal can with a lid with a compartment inside about one-fourth the size of the container in which ice is placed to cool the drinking water in the remaining compartment. Inside the can, over the compartment used for drinking water, there is a place for a metal screen which, when properly installed, is intended to prevent objects of any kind from dropping into the water when the lid is removed to place ice in the container. In the instances of the cabooses listed above, the metal screen was missing or was pierced with holes such that ice, dust and dirt could enter through and to the drinking water. On Cabooses Nos. 1142 and 1116 there was no water jug in the cooler and the top of the container was open exposing the inside to contamination. The drinking water was visibly dirty on Caboose No. 1206. The above conditions were reported by the transportation supervisor and were not refuted by respondent.

Section 14 provides 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. The transportation supervisor reported that on Cabooses Nos. 140, 558, 765, 1000, 1022, 1023, 1090, 1094, 1123, 1206, 1213 and 1227 the spigot of the drinking water container emptied into a metal basin which is a receptacle for a wash basin. The facility

is the same as described in Decision No. 65375 dated May 14, 1963 in Investigation of Pacific Electric Railway Company and in which the Commission found said facility did not meet the requirements of Section 14 of General Order No. 114.

Section 15 provides that cabooses used in road service shall be equipped with an effective means of extinguishing minor fires and that such extinguishing agents shall be placed in a readily accessible location and shall be effectively maintained. The transportation supervisor reported that on most of its cabooses respondent provides an Indian Fire Pump as an agent to extinguish minor fires together with three shaker boxes of a compound called "Blazer" which is labeled as an agent for the extinguishing of journal box fires. In his inspections he found that Cabooses Nos. 765, 558, 1054, 1208, 140, 1009, 1000, 1200, 1111 and 1123 did not have an Indian Fire Pump or other fire extinguisher other than the aforementioned boxes; on Cabooses Nos. 1089, 1227, 1090, 1023, 1146 and 1206 the Indian Fire Pumps were empty. Caboose No. 1213 had two Indian Fire Pumps both of which were empty, and, the Indian Fire Pump on Caboose No. 1198 was inoperative. Respondent did not refute the conditions reported. Counsel for respondent in cross-examination of the transportation supervisor implied that the "Blazer" compound and the water stored for drinking and lavatory purposes constitute an effective means of extinguishing minor fires as required by Section 15. That contention or implication is not acceptable. The assistant general manager testified that respondent has experienced many thefts of the Indian Fire Pumps and that such thefts are responsible for the lack of extinguishers on cabooses at certain times.

Section 16 provides that each caboose shall carry in a visible and accessible place a first aid kit which shall be fully equipped and maintained in good condition. The transportation supervisor reported that the first aid kits in Cabooses Nos. 1123, 1134 and 1482 were empty and that on Cabooses Nos. 1227, 1000, 1198, 1200, 1023, 1213 and 1111 the seals of the first aid kits had been broken and that some of the contents had been removed. The contents of those kits consisted of less than six standard packages containing two pieces of sterile gauze, one ribbon bandage and one triangular cambric picture bandage in aseptic container. The staff contends that first aid kits are not fully equipped if they do not contain the aforesaid six standard packages.<sup>2/</sup> The assistant general manager testified that respondent replaces an average of 32 complete first aid kits per month and provides an average of 693 replacements for standard packages each month. Its operating rules require that a report be submitted whenever the seal of the first aid kit is broken and any of the contents used. He has never seen a report concerning the use of a first aid kit nor in 15 years of employment with respondent has he ever seen or heard of one being used in connection with an injury incurred by trainmen. From those circumstances he believes that there has been unauthorized appropriation of the first aid kits.

Section 17 provides that cabooses shall be supplied with fresh water, paper towels, sanitary drinking cups, fuel, ice as needed, hand soap or other cleansing agent in appropriate dispensers

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<sup>2/</sup> This contention is based upon the requirements for a first aid kit on steam trains prescribed in Section 7608 of the Public Utilities Code.

and such other equipment as may be required for service. The conductor testified that during the period January 10, 1963 through January 19, 1963 the cabooses on which he was assigned to train service were supplied with a bar of hand soap but were not equipped with a soap dispenser or soap tray. The transportation supervisor testified that his inspections disclosed that 11 cabooses had no ice, six had no hand soap, two had no water, two had no soap tray or dispenser, three had no paper cups, two had no fuel and one did not have paper towels. At the times the inspections were made, the cabooses had just been taken from a train or were assigned to a train but did not yet have the train crews aboard. The supplies listed above, other than soap dispensers, are ordinarily brought aboard the caboose by the trainmen and are intended to be used by the trainmen while aboard the caboose. The testimony of the transportation supervisor is not sufficient to show that the supplies were not on board at the times the cabooses left the yard or maintenance station.

Other than the testimony of the assistant general manager relating to the problems encountered by respondent in maintaining certain equipment and supplies aboard cabooses because of theft or mysterious disappearance, the evidence presented by respondent consisted of a description of the actions taken by respondent since March 1959 with respect to improvements of cabooses. Between March 1959 and October 1960 respondent had rebuilt and standardized 456 cabooses. By 1961, 90 percent of its steel cupola type cabooses had been through a heavy shopping program for the purpose of standardizing equipment. Each caboose was out of service three weeks while undergoing the modifications. The cost of the modernization program

has been \$879,000. In December 1960 or January 1961 respondent placed orders for 200 new bay window type cabooses. Delivery of those cabooses commenced in July 1961 and was completed in September 1961. In December 1962 the Executive Committee of Southern Pacific Company authorized the purchase of 100 additional new bay window type cabooses. The assistant general manager stated that the specifications were being prepared at the time of the hearing herein and that the purchase order would be placed within two months from that time.

We find that:

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

2. Subsequent to October 2, 1962 respondent was required by General Order No. 114 to provide and maintain on all cabooses used in service the equipment, facilities and supplies prescribed in Sections 3, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 thereof.

3. Respondent was directed by Section 1 of General Order No. 114 not to use, subsequent to October 2, 1962, any caboose in service unless the equipment, facilities and supplies on said caboose conformed to the requirements of the sections of General Order No. 114 enumerated above.

4. It has not been shown that respondent used cabooses in service subsequent to October 2, 1962 that were not equipped with trucks and wheels of the type specified in Section 3 of General Order No. 114.

5. It has not been shown that respondent used cabooses in service subsequent to October 2, 1962 that were not equipped with a heating facility of the type specified in Section 6 of General Order No. 114.

6. Respondent used cabooses in service subsequent to October 2, 1962 that were not equipped with bunks or bunk cushions of the dimensions required in Section 8 of General Order No. 114.

7. It has not been shown that respondent used cabooses in service subsequent to October 2, 1962 that were not equipped with glass other than of the type specified in Section 9a of General Order No. 114.

8. Respondent used cabooses in service subsequent to October 2, 1962 that were not equipped with a wind deflector on each cupola side window as prescribed in Section 9b of General Order No. 114.

9. Respondent used cabooses in service subsequent to October 2, 1962 on which weatherstripping or weatherproof sash was not installed and maintained at all windows and doors to protect against weather and the seepage of dirt or dust as prescribed in Section 10 of General Order No. 114.

10. Respondent used cabooses in service subsequent to October 2, 1962 which were not equipped with window shades on all windows other than those in cupolas or bays as prescribed in Section 11 of General Order No. 114.

11. Respondent used cabooses in service subsequent to October 2, 1962 that were not equipped with grab handles, stanchions, or bars at the exits of the cabooses as prescribed by Section 12 of General Order No. 114.

12. Respondent used cabooses in service subsequent to October 2, 1962 that had drinking water containers which permitted the dispensing of other than fresh and pure drinking water and therefore were of a type other than that required in Section 13 of General Order No. 114. ✓

13. Respondent used cabooses in service subsequent to October 2, 1962 on which the facility for the washing of hands and face, namely the wash basin facility, was at a location where the use thereof could result in contamination of the drinking water dispensing system and therefore not in accordance with the requirements of Section 14 of General Order No. 114.

14. Respondent used cabooses in road service subsequent to October 2, 1962 that were not equipped with an effective means of extinguishing minor fires other than journal box fires as prescribed in Section 15 of General Order No. 114.

15. Respondent used cabooses in service subsequent to October 2, 1962 that did not have a fully equipped and maintained first aid kit required by Section 16 of General Order No. 114.

16. Respondent used cabooses in service subsequent to October 2, 1962 that were not equipped with a soap tray or other soap dispenser required by Section 17 of General Order No. 114.

Based on the foregoing findings of fact we conclude that respondent violated Section 702 of the Public Utilities Code by failing to comply with General Order No. 114 and should be required to cease and desist from any future violation of said General Order.

The respondent offered evidence seeking to justify its failure to comply with the requirements. We point out that, with the ✓



possible exception of the authorization given by its Executive Committee to purchase 100 new cabooses, none of the actions described by respondent was taken by it subsequent to the issuance of General Order No. 114. The record herein is devoid of any indication that respondent took any action from September 12, 1961 to January 10, 1963 to comply with any of the provisions of the General Order. On January 10, 1963 it filed an application for an extension of time in which to comply with the General Order.<sup>3/</sup> That application was filed over 15 months after the effective date of the General Order, over 90 days after the equipment, facilities and supplies were to be installed and over 30 days after the Commission instituted this investigation. The record leaves little doubt that respondent completely disregarded the requirements of the General Order. Accordingly, we further conclude that appropriate penalty actions should be instituted against respondent and that the Commission should give consideration to the institution of proceedings for contempt.

O R D E R

IT IS ORDERED that Southern Pacific Company, a corporation, shall cease and desist from failing to comply with any of the requirements of General Order No. 114.

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<sup>3/</sup> This application, No. 45102, was denied by the Commission on January 22, 1963 in Decision No. 64821.

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 such service.

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

*William L. Burnett*  
President  
*John S. [unclear]*  
*Walter W. [unclear]*  
*George T. Hoover*  
*Fredrick B. [unclear]*  
Commissioners