

**ORIGINAL**Decision No. 68457

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

In the Matter of the Investigation on the Commission's own motion into the number of brakemen that should be employed by railroad corporations on their trains operating within this State as are necessary to promote the safety of the employees of such railroad corporations, their passengers, and the public.

Case No. 4988

Investigation into the number of brakemen that should be employed by railroad corporations on trains operating in California as are necessary to promote the safety of railroad employees, passengers and the public.

Case No. 7847

In the matter of the application of Southern Pacific Company to have set aside the provisions of California Public Utilities Commission Decision and Order No. 43555 in Case No. 4988.

Application No. 46111

In the matter of the application of Northwestern Pacific Railroad Company to have set aside the provisions of California Public Utilities Commission Decisions and Orders No. 43966 and 47898 in Case No. 4988.

Application No. 46112

In the matter of the application of the CALIFORNIA STATE LEGISLATIVE COMMITTEE, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN to amend, supplement, modify, reconsider or expand the provisions of California Public Utilities Commission Decision and Order No. 43555 in Case No. 4988.

Application No. 46145

In the matter of the application of the CALIFORNIA STATE LEGISLATIVE COMMITTEE, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN to amend, supplement, modify, reconsider, or expand the provisions of California Public Utilities Commission Decisions and Orders No. 43966 and No. 47898 in Case No. 4988.

Application No. 46149

In the matter of the application of The Atchison, Topeka and Santa Fe Railway Company for the revocation of Decision and Order No. 43974 dated March 21, 1950, Case No. 4988.

Application No. 46168

In the matter of the application of the CALIFORNIA STATE LEGISLATIVE COMMITTEE, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN to amend, supplement, modify, reconsider, or expand the provisions of California Public Utilities Commission Decision and Order No. 43974 dated March 21, 1950, Case No. 4988.

Application No. 46180

In the matter of the application of the WESTERN PACIFIC RAILROAD COMPANY for the setting aside of Decision and Order No. 43373, dated October 4, 1949, Case No. 4988.

Application No. 46216

In the matter of the application of UNION PACIFIC RAILROAD COMPANY, a corporation, to have Decision No. 43886, entered in Case No. 4988 on March 7, 1950, revoked and set aside.

Application No. 46242

In the matter of the application of the CALIFORNIA STATE LEGISLATIVE COMMITTEE, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN to amend, supplement, reconsider or expand the provisions of California Public Utilities Commission Decision and Order No. 43886 in Case No. 4988.

Application No. 46283

In the matter of the application of the CALIFORNIA STATE LEGISLATIVE COMMITTEE, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN to amend, supplement, modify, reconsider, or expand the provisions of California Public Utilities Commission Decision and Order No. 43373 dated October 4, 1949.

Application No. 46297

Richard W. Bridges, for The Western Pacific Railroad Co.; William R. Denton, for Southern Pacific Co. and Northwestern Pacific Railroad Co.; Robert B. Curtiss, for The Atchison, Topeka and Santa Fe Railway Co.; Marshall W. Vorkink, for Union Pacific Railroad Co., respondents.

J. E. Howe, for G. W. Ballard, Brotherhood of Railroad Trainmen AFL-CIO; Leonard M. Wickliffe, for California State Legislative Committee, Order of Railway Conductors and Brakemen; P. J. Mathews, for Brotherhood of Railroad Trainmen and Legislative Board; James L. Evans, for California State Legislative Board and B. of LE&E, interested parties.

Lynn E. Hull, for the Commission staff.

#### ORDER OF DISMISSAL

Section 6902.5 of the Labor Code, which was adopted in 1948, empowered this Commission to require each railroad to operate trains "with such number of brakemen as are necessary to promote the safety of its employees, passengers, and the public; provided, however, that the Commission shall not require the employment of such number of brakemen as will result in feather-bed practices". Thereafter, the Commission instituted Case No. 4988 and following public hearings issued the following decisions:

Decision No. 43373	(Western Pacific Railroad)
Decision No. 43555	(Southern Pacific Company)
Decision No. 43886	(Union Pacific R. Co.)
Decision No. 43966	(N.W.P.R. Company)
Decision No. 43974	(A.T.&S.F. Rwy. Co.)
Decision No. 47898	(N.W.P.R. Company)

Commencing on January 17, 1964, with the filing of Application No. 46111, each of the above railroads filed an application requesting that the above decisions be set aside insofar as they require a third brakeman on the designated trains over the designated areas referred to in said decisions. Thereafter applications were

filed on behalf of the Order of Railway Conductors and Brakemen requesting that the above decisions, among other things, be amended to provide for the manning of additional trains with a third brakeman.

On February 25, 1964, this Commission issued an order instituting an investigation into the matter of the number of brakemen that should be employed by railroad corporations on their trains operated in California to promote the safety of their employees, passengers, and the public, for the purpose of determining whether any of the above decisions should be rescinded, altered, or amended, or any further order or orders issued.

The matters were consolidated for public hearing, which was held on November 23, 1964, at San Francisco before Commissioner Bennett and Examiner Daly. The matters were submitted upon a motion to dismiss by applicants herein.

The motions to dismiss were predicated upon the passage of Proposition 17, on November 3, 1964, by the electors of the State of California. The initiative measure amended the Labor Code by adding Sections 6900.1 and 6900.5 and repealing Sections 6902, 6902.1, 6902.5 and 6903, thereof. Said measure declares state policy on manning trains by providing that Award No. 282 of the Federal Arbitration Board on the manning of diesel powered freight trains shall be effective in California. Sections 6900.1 and 6900.5 of the Labor Code read as follows:

6900.1 This Act shall be known and cited as the Railroad Anti-Featherbedding Law of 1964.

6900.5 It is the policy of the people of the State of California that featherbedding practices in the railroad industry should be eliminated and that national settlement of labor controversies relating to the manning of

trains should be made effective in California. Accordingly, the award of the Federal Arbitration Board No. 282, appointed by President John F. Kennedy pursuant to Congressional Public Law 88-108 of August 28, 1963, providing for the elimination of excess firemen and brakemen on diesel powered freight trains, or awards made pursuant thereto, shall be made effective in this State. Said award was the culmination of the proceedings originating with the Presidential Railroad Commission which was appointed by President Dwight D. Eisenhower at the request of both railroad labor and management and reported to President Kennedy on February 26, 1962.

Nothing contained in the laws of this State or in any order of any regulatory agency of this State shall prevent a common carrier by railroad from manning its trains in accordance with said award, in accordance with any federal legislation or awards pursuant thereto, or in accordance with any agreement between a railroad company and its employees or their representatives.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that Applications Nos. 46111, 46112, 46145; 46149, 46168, 46180, 46216, 46242, 46283 and 46297 are hereby dismissed; Decisions Nos. 43373, 43555, 43886, 43966, 43974 and 47898 are hereby set aside; and that Cases Nos. 4988 and 7847 are hereby discontinued.

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

Dated at San Francisco, California, this 12<sup>th</sup> day of JANUARY, 1965.

Friedrich B. Holhoff  
President  
George C. Trover

William G. Dennis  
Commissioners