

**ORIGINAL**

Decision No. 71493

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GEORGE J. CAVANAUGH  
 Complainant,  
 vs.  
 SOUTHERN PACIFIC COMPANY,  
 Defendant.

Case No. 8407

George J. Cavanaugh, for the complainant.  
W. A. Gregory, for the Southern Pacific  
 Company, defendant.

O P I N I O N

The complaint herein alleges that the complainant and other residents of Eastmoor Road, in Burlingame, live parallel to and within approximately 100 feet of the right of way and tracks of the Southern Pacific Company; it further alleges that the section of track next to the complainant's home is used by the defendant for constant switching operations and train movements from 6:30 p.m. to 3:00 or 4:00 a.m.; that the excessive noise from the constant coupling, uncoupling and switching rattles windows, shakes buildings, and prevents the nearby residents from obtaining the sleep that is required; it is further alleged that in the past the train operations have been minor and did not create any disturbance, but during the past two years the activity has increased until the noise is now unbearable; it is further alleged that the switching operations are becoming more extensive since the defendant apparently considers this area as a freight switching yard; the complaint states that in 1965 the Public Utilities Commission required the defendant to issue bulletins to its employees requesting that operations be conducted with a minimum of noise and that the employees cooperated for awhile,

but the noise level is steadily increasing and has now become a public nuisance. An amended complaint was filed on June 14, 1966. The amendment consists of the signatures of 106 additional residents of the area.

The Southern Pacific Company filed an answer on June 16, 1966. It admits the location of the railroad and the fact it is operated; all other allegations of the complaint are denied. The answer further alleges that the facts stated in the complaint do not constitute a cause of action and that the complaint should therefore be dismissed.

Public hearing was held before Examiner Fraser on July 11, 1966, at Burlingame.

The complainant testified as follows: The noise is heard from Tuesday through Friday night, Mondays and weekends are usually quiet; it frequently starts as early as 6:00 p.m. and is loud and continuous from about 10:30 p.m. to 3:00 or 4:00 a.m.; the disturbance is caused by intermittent coupling and uncoupling, the noise of moving trains and the continuous roar of locomotive engines; the locomotives are parked on sidings for long periods and the engines never turned off; until about three years ago there were fewer trains and they were operated quietly; the noise then started to increase in volume and to last for longer periods; the complainant wrote a letter to the Public Utilities Commission during February of 1965 to report the noisy operations and it made reference also to refrigerator cars on the sidings with their cooling plants chugging away all night. The Commission sent out an investigator and the noise decreased and refrigerator cars were removed shortly thereafter; the noise has been increasing since about December of 1965 and some further action is required; on cross-examination it was admitted that the area has been classified as "light industrial" by

the City of Burlingame; that Westinghouse, Sylvania and Purity Stores have large installations located directly across the tracks from the complainant's homes; that the Bayshore Highway and the El Camino Real Highway are located in the vicinity; that the San Francisco International Airport is also nearby, but the defendant's operations are most annoying; all of the present three railroad tracks were there when Cavanaugh moved in; main line passenger and freight trains that pass through without stopping are no problem, since they do no coupling or switching. Three other witnesses gave testimony similar to complainant. It was agreed that the most aggravating disturbance started every night (Tuesday through Friday) about 11:00 p.m. and intermittently until 3:00 or 4:00 a.m.

Defendant's counsel made a motion to dismiss the complaint on the ground that it fails to state a cause of action. He pointed out that defendant feels sympathetic about the situation and will direct its supervisors and employees to eliminate all unnecessary noise. The defendant's Assistant Division Superintendent testified as follows: He controls the Burlingame area and has 25 freight and 48 passenger trains operating daily; passenger service has decreased, but freight service is increasing; the City of Burlingame has classified the area across the tracks from the complainants as industrial; within the last five years five large shippers have moved into this area and each one requires a string of empty box cars almost every day; these empty cars are brought in at night, loaded during the day and pulled out the second night when a second string of empties is left; this work must be done at night; the loading or unloading of rail cars is done during the normal workday from 8:00 to 5:00 when employees are available; empty cars are frequently brought to the shipper early in the evening, but loaded freight cars destined for eastern points are picked up after midnight by one of several interstate freight trains; this requires the train to stop;

the engine to uncouple and proceed to the siding between the two main tracks where the engine is coupled to the cars which are to be picked up, then the engine pulls the cars from the siding onto the main track and backs up until the newly picked up cars become coupled to the train; this process takes about 15 minutes and would occur after midnight; the work must be done at night to satisfy the shippers and it must be scheduled so the trains leaving Bayshore Yard late at night for eastern and northern points can pick up the cars; the defendant has issued instructions to the train crews involved to eliminate or lessen all unnecessary noise; defendant is now in the process of negotiating the purchase of a tract of land in the general vicinity which will be used as a freight yard; if the land is obtained it is likely that all the late-night pickups will be handled in this yard; there is no place where this can be done at the present time.

Based upon the evidence the Commission makes the following findings of fact:

1. The area in which the complainants reside is immediately adjacent to an area which has been classified as an industrial zone by the City of Burlingame.

2. Many large shippers in the area require almost daily rail service with the delivery and pickup of cars after dark, so as not to interfere with the shippers' employees during the day.

3. It is most economical and practical for the defendant to stop its eastbound trains one or two hours after midnight to pick up freight cars destined to eastern and northern points. This is a very noisy procedure since it involves coupling the new cars to the eastbound train and then jolting the newly formed train into motion.

4. The railroad operations at said location are noisy. If a noise is a result of the necessary and proper operation of a railroad it is not a nuisance, even though loud and long; to decide otherwise herein and restrict defendant's operations would make it impossible to provide an adequate rail service to shippers in the area.

5. Loud or continuous noise heard between midnight and six in the morning is a nuisance, if unnecessary and avoidable in normal railroad operation.

6. There is nothing in the present record to indicate that the railroad operations described were excessively noisy or unnecessary. Nevertheless, due to the circumstances, the defendant should be required to notify in writing all employees working on the late eastbound trains, of the need to suppress or eliminate unnecessary noise between midnight and six in the morning.

7. This Commission has jurisdiction, under Section 768 of the Public Utilities Code, to require a railroad to cease or reduce excessive or unnecessary noise where it is offensive to the public.

Based upon the above findings the Commission concludes that the defendant should be required to issue operating bulletins to inform the crews of late eastbound freight trains of the fact there have been public complaints and the need to eliminate all unnecessary noise; also that the text of the bulletin and the date it was circulated should be reported to this Commission.

O R D E R

IT IS ORDERED that:

1. The Southern Pacific Company shall, not later than ten days after the effective date of this order, issue an operating bulletin

which will inform the crews of eastbound freight trains operating through Burlingame between 11 p.m. and 6 a.m. that there have been public complaints and of the need to eliminate or reduce unnecessary noise. A copy of this bulletin shall be filed with the Commission within ten days of the date on which it is issued.

2. Except as provided in paragraph 1 of this order the relief sought in the complaint of George J. Cavanaugh, et al., against the Southern Pacific Company, is denied.

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

Dated at San Francisco, California, this 1st  
day of NOVEMBER, 1966.

*John E. Bushnell*  
President

*George L. Grover*

*Fredrick B. Holbeck*

*Augusta*

*William C. Bennett*  
Commissioners