

Decision No. 76754

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ASSOCIATED THEATRES, INC., a  
California corporation,

Complainant,

vs.

SOUTHERN PACIFIC RAILWAY COMPANY,

Defendant.

Case No. 8940  
(Filed July 24, 1969)OPINION AND ORDER ON MOTION TO DISMISS

This is a complaint by an outdoor movie theatre that defendant railroad wilfully and deliberately, and in direct violation of the Commission's order in Decision No. 73354, dated November 21, 1967, in Case No. 8589, unnecessarily caused the bright headlights or Mars Lights of defendant's locomotives to be directed towards the screen of complainant's outdoor movie theatre. Defendant made a general denial and moved for dismissal on the ground that the Commission is without jurisdiction over the cause.

At prehearing conference held September 12, 1969, before Examiner Thompson at San Francisco, it was agreed by the parties that the issue of jurisdiction should be decided on briefs to be filed prior to hearing the evidence on the merits of the complaint. Briefs are in and defendant's motion is ready for a ruling.

It is defendant's contention that the use of headlights on locomotives is a regulatory field that has been totally occupied by federal legislation and regulations, and that an attempt by the Commission to regulate such use is violative of the supremacy clause of the U. S. Constitution.

The Boiler Inspection Act (45 U.S.C. 22-34) completely occupies the field of regulation of the equipment on locomotives, Napier v. Atlantic Coast Line R. Co., 272 U.S. 605 (1926). This Commission has recognized that it may not regulate the design, construction or material of any locomotive or tender or the appurtenances thereof when operated by a railroad subject to the Interstate Commerce Act, Iny. re Sanitary Facilities on Locomotives, 62 Cal.P.U.C. 6. We do not conclude, as suggested by defendant, that the Boiler Inspection Act precludes regulation by the States of any activity by the railroad that involves the operation or use of the locomotive or the appurtenances thereof. The citations offered by defendant do not support any such conclusion. The position taken by defendant, if adopted, would have the result of precluding regulation by the Commission of any railroad operations. Such operations, both train movements and switching movements, necessarily involve the use of a locomotive. There is no indication by Congress or by the courts that in the enactment of the Boiler Inspection Act it was intended that the State not be permitted to regulate train operations within its borders merely because the movement of the train necessitates the use of the throttle and brakes and other appurtenances of the locomotive. We hold that this Commission has the power to regulate railroad operations within the State of California provided that such regulation does not affect the design, construction or material of any locomotive or tender or the appurtenances thereof and does not in any way stultify or interfere with the federal regulations prescribed under the Boiler Inspection Act.

The Commission's order in Decision No. 72783 (67 Cal.P.U.C. 404), as amended by Decision No. 73354, provides:

"1. Defendant, Southern Pacific Company, shall eliminate any unnecessary use of the bright headlights or Mars lights directed towards the screen of the Spartan Auto Movie while engaged in operations between East Alma Avenue and Keyes Street in San Jose."

Said Decision No. 72783 contains the following findings

of fact:

- "3. No road service is performed by defendant on the tracks in or near said crossings [Keyes Street and East Alma Avenue] and all of its operations conducted on and along said tracks are switching movements."
- "8. The bright headlights and the Mars light are of such intensity as to provide full illumination at distances of not less than 800 feet and can reasonably be expected to interfere with the projection of complainant's motion picture at distances of less than 1,000 feet."

In the opinion in said decision it is stated:

"All of the said tracks are in the yard limits of defendant and train operations conducted thereon are under the direction and supervision of the yardmaster at San Jose."

And it is also stated:

"When the light switch is on 'Dim' the intensity of the light is approximately one-half of that of the bright light."

The federal regulations (Title 49, Code of Federal Regulations) cited by defendant are:

"§230.129 Locomotives used in road service.

(a) Each locomotive used in road service between sunset and sunrise shall have a headlight which shall afford sufficient illumination to enable a person in the cab of such locomotive who possesses the usual visual capacity required of locomotive enginemen, to see in a clear atmosphere, a dark object as large as a man of average size standing at a distance of at least 800 feet ahead and in front of such headlight; and such headlight must be maintained in good condition.

(b) Each locomotive used in road service, which is regularly required to run backward for any portion of its trip, except to pick up a detached portion of its train or in making terminal movements, shall have on its rear a headlight which shall meet the foregoing requirements.

(c) Such headlights shall be provided with a device whereby the light from same may be diminished in yards and at stations or when meeting trains.

(d) When two or more locomotives are used in the same train, the leading locomotive only will be required to display a headlight."

"§230.131 Locomotives used in yard service.

Each locomotive used in yard service between sunset and sunrise shall have two lights, one located on the front of the locomotive and one on the rear, each of which shall enable a person in the cab of the locomotive under the conditions, including visual capacity, set forth in §230.129, to see a dark object such as there described for a distance of at least 300 feet ahead and in front of such headlight; and such headlights must be maintained in good condition."

"§230.425 Headlights.

(a) Each unit operated separately and the leading unit of a multiple unit train shall have a headlight which shall afford sufficient illumination to enable a person in the operating compartment who possesses the usual visual capacity required of enginemen to see in a clear atmosphere a dark object as large as a man of average size standing erect at least 300 feet ahead and in front of such headlight; and such headlight must be maintained in good condition.

(b) Such headlights shall be provided with a device, which may be conveniently operated by the engineman, whereby the light from same may be diminished in yards and at stations or when meeting trains."

Section 230.129 applies only to locomotives in road service. Defendant does not conduct any operations in road service on the tracks involved in the aforementioned order.

Section 230.131 regulates the headlights of locomotives used in yard service and requires the locomotives to be equipped

with headlights which will enable a person in the cab to see a dark object the size of a man standing at least 300 feet ahead and in front of such headlight. Operations conducted on the tracks here involved are in yard service. The order in Decision No. 73354 does not interfere with the use of such lights by defendant. In fact, it requires defendant to utilize such lights rather than the brighter ones required for road service operations.

Section 230.425 provides for the dimming of the bright headlights in yards. The tracks involved in this complaint are in defendant's yard at San Jose and the order in Decision No. 73354 does nothing more than require defendant to dim the lights when they are directed towards complainant's movie screen.

The order in Decision No. 72783, as amended by Decision No. 73354, does not regulate the design, construction or material of defendant's locomotives or their headlights, nor does it require the use of said lights in such manner as to stultify or interfere with the federal regulations cited by defendant.

Defendant makes other contentions against the validity of the Commission's order. Those same assertions were made by defendant in the proceedings in Case No. 8589 and are discussed in Decision No. 72783. They were also raised by defendant in petition for rehearing in that case and were ruled against in Decision No. 73354. We reaffirm our conclusions in said decisions regarding those arguments; however, we shall briefly recite defendant's contentions so as to indicate that they have received consideration.

Defendant asserts that the Commission's order is unconstitutional because it constitutes an undue burden on interstate commerce. Such burden assertedly is an increase in the

likelihood of accidents to defendant's equipment and interference with its operations. In Decision No. 72783 we found:

- "5. Under normal operating conditions, and under usual or ordinary circumstances, the operation of the bright headlight of the Mars light is not necessary and is of little or no value to provide warning to pedestrians and motorists of the train's approach to the grade crossings at Keyes Street and at East Alma Avenue." and,
- "6. Under normal operating conditions and under usual or ordinary circumstances the operation of the bright headlight or of the Mars light on and along said tracks is not necessary and is of little or no value to the protection and preservation of the safety of railroad employees and the public on and along said section of right of way."

The Commission's order does not deny defendant the use of the bright headlight or of the Mars light when the use of such lights are necessary by reason of unusual or extraordinary circumstances. The allegation that the Commission's order will increase the likelihood of accidents is contrary to the findings of the Commission in Decision No. 72783.

Defendant argues that the Commission's order is unconstitutional because it is an improper exercise of the State's police power in that it is for the benefit of a single individual or business rather than for the public, and also because the order constitutes the taking of an interest in the defendant's property without just compensation. It is defendant's contention that by reason of use for a hundred years it has gained a prescriptive right in the use of headlights as they may shine on complainant's land.

As we stated in Decision No. 72783, under Section 701 of the Public Utilities Code the Commission has the power to

supervise and regulate defendant and its operations. It has exercised that power to require defendant to eliminate an unnecessary annoyance to complainant and its patrons. That a public utility may be supervised and regulated in the conduct of its operations and its use of the property it has devoted to the public has been well settled for a hundred years.

Defendant's arguments are without merit. The motion to dismiss should be denied. Let the complaint go to hearing to receive evidence as to the merits.

IT IS ORDERED that the motion by defendant for dismissal is denied.

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

Dated at San Francisco, California, this 10<sup>th</sup> day of FEBRUARY, 1970.

William Seymour Jr.  
President

Augusta

[Signature]

[Signature]  
Commissioners

*I dissent disagree.  
This motion for  
dismissal should be granted  
J. Ballerina*