

crossing protection the Commission deferred such apportionment of cost until further order of the Commission. There was no such disagreement between the Department and the UP. Hearing on the issue of apportionment of automatic grade crossing protection maintenance cost for the SP crossing was held on January 26, 1970 at San Francisco before Examiner Robert Barnett.

The SP contends that the maintenance cost apportionment rule announced in Decision No. 75676 dated May 20, 1969 in Application No. 50124 (the Alton decision) is applicable. The Department contends that the rule is ambiguous. In Alton, in conjunction with a realignment and widening of a grade crossing, grade crossing protection was altered from the existing two Standard No. 8 flashing light signals to two Standard No. 8 flashing light signals augmented with automatic gate arms. In Alton, prior to alteration the entire cost of maintenance of grade crossing protection was borne by the railroad. It was argued that after alteration the apportionment of grade crossing protection costs should be based only upon the additional maintenance units which were the result of and created by the alteration. Ordering paragraph 2 of the Alton decision states, "In apportioning said maintenance costs the percentages shall be applied to the total maintenance cost reflected by the total number of maintenance units assigned to the improved protection at said crossings".

In the case at bar the Department asserts that the words "improved protection" either refer to the difference between the total maintenance units of the newly constructed crossing protection and the total maintenance units of the crossing protection prior to its alteration, or at the very least do not include those elements of the altered protection that were not improved. The SP contends that the Alton decision is not ambiguous and that the ordering paragraphs refer to an apportionment based upon the total maintenance costs of the grade crossing protection after alteration.

The case at bar presents a concrete example of the issues involved. It is undisputed that the AAR (Association of American Railroads) maintenance units of Crossing No. BBJ-510.33 prior to alteration were 16 units; the AAR units after alteration are expected to be 32 units. An engineer for SP testified that each wig-wag signal protecting the crossing before alteration was augmented by a back light. Each back light had a value of 1 AAR unit for a total of 2 AAR units for the crossing. In the altered crossing two of the Standard No. 8 flashing light signals will have a back light of the value of 1 AAR unit, for a total of 2 AAR units for the altered crossing. The back lights on the altered crossing will be an improvement over the back lights on the original crossing. However, the testimony shows that had the back lights on the original crossing been damaged they would have been replaced by the kind of back lights that will be installed in the altered crossing. So, in effect, the back lights are the same before and after alteration of the crossing.

The Department argues that since the back lights on the original crossing protection will be the same as the back lights on the altered crossing protection the cost of maintaining those back lights should remain with the party who bore the cost of maintaining the back lights in the original construction, that is, the railroad. In our opinion the Department's argument was clearly answered by the Commission adversely to the Department.

In Alton the Commission answered the specific question, "... whether, under Section 1202.2 of the Public Utilities Code, ^{1/} the entire cost of maintenance is to be apportioned with respect to a crossing which previously had some type of automatic protection, or whether only the increased maintenance is to be divided,..." with the statement that "Section 1202.2 of the Public Utilities Code requires that when cost of maintenance is apportioned by the Commission the entire cost of maintaining the automatic protection is to be divided, even though some type of automatic protection previously existed at the crossing."

(Decision No. 75676, Sheet 11.) There is no need to review the arguments and the reasoning of the Commission that led to the Alton result. The rule of Alton is clear, unambiguous, and easy to apply. We shall follow it.

^{1/} "In apportioning the cost of maintenance of automatic grade-crossing protection constructed or altered after October 1, 1965 under Section 1202, as between the railroad or street railroad corporations and the public agencies affected, the commission shall divide such maintenance cost in the same proportion as the cost of constructing such automatic grade-crossing protection is divided."

The Commission has been informed that the SP and the Department have agreed to divide the cost of constructing the automatic grade crossing protection at Crossing No. BBJ-510.33 fifty percent to the SP and fifty percent to the Department. In applying Section 1202.2, as construed in Alton, to the case at bar we find that the entire maintenance cost of the altered automatic grade crossing protection should be divided in the same proportion as the cost of constructing the automatic grade crossing protection was divided. To answer the specific question raised by the Department we find that the cost of maintaining the back lights on the Standard No. 8 flashing light signals should be divided equally between the parties. That is, of the two units attributable to back lights the maintenance cost of one unit should be paid for by the Department and one unit paid for by the SP. To put it another way, assuming that the protection at the altered crossing requires 32 AAR maintenance units, one-half of the maintenance cost, i.e., 16 units, should be borne by the Department and one-half, i.e., 16 units, by the SP.

Findings of Fact

1. In Decision No. 76140 protection at SP crossing No. BBJ-510.33 was ordered to be altered from two wig-wag signals to four Standard No. 8 flashing light signals augmented with automatic gate arms.

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2. Each wig-wag signal protecting the crossing before alteration was augmented by a back light having a value of one AAR unit. In the altered crossing two of the Standard No. 8 flashing light signals will have a back light of the value of one AAR unit. The back lights on the altered crossing will be an improvement over the back lights on the original crossing but such improvement is no more than would be expected through ordinary maintenance.

3. AAR maintenance units attributable to the crossing prior to alteration were 16 units, including the units for back lights; the AAR units after alteration are expected to be 32 units, including the units for back lights. All maintenance of grade crossing protection prior to alteration was borne by the railroad.

4. The SP and the Department have agreed to divide the cost of constructing the automatic grade crossing protection at Crossing No. BBJ-510.33 fifty percent to the SP and fifty percent to the Department.

5. The apportionment of the cost of maintenance of automatic grade crossing protection at the altered Crossing No. BBJ-510.33 shall be fifty percent to the SP and fifty percent to the Department. That is, assuming that the protection of the altered crossing requires 32 AAR maintenance units, one-half of the maintenance cost, i.e., 16 units, should be borne by the Department and one-half, i.e., 16 units, by the SP.

Conclusion of Law

The maintenance costs of the altered grade crossing protection to be installed at Crossing No. BBJ-510.33 should be apportioned on the basis of the total number of AAR maintenance units of said protection, fifty percent to the Department and fifty percent to the railroad.

O R D E R

IT IS ORDERED that the maintenance costs of the altered grade crossing protection to be installed at Crossing No. BBJ-510.33 shall be apportioned on the basis of the total number of AAR maintenance units of said protection, fifty percent to the State of California Department of Public Works and fifty percent to the Southern Pacific Transportation Company.

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

Dated at San Francisco, California, this 11th day of MARCH, 1970.

William Sproule Jr.
President
Augusta
J. M. [unclear]
[unclear]
Verona L. Stanger
Commissioner