

ORIGINAL

Decision No. 77875

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a cor-
poration,

Defendant.

Case No. 8928
(Filed June 20, 1969)

Clifton Hildebrand, S. E. Fleming and Arnold
Kreuger, for Brotherhood of Maintenance of
Way Employees, complainant.

Robert S. Bogason and William R. Denton, for
Southern Pacific Company and Southern
Pacific Transportation Company, defendant.

B. C. Hilbert, for American Train Dispatchers
Association, interested party.

Ted E. Rogers and G. H. Dunn, for the Commis-
sion staff.

O P I N I O N

This complaint concerns defendant's rule governing the operation of track cars on those portions of defendant's trackage which are operated under Centralized Traffic Control (CTC). The rule is as follows:

"Within CTC limits track car operator must obtain clock time from train dispatcher for movement of track cars between two points. Train dispatcher will record name and occupation of person making request and after designating clock time and limits of movement he must immediately activate levers on control machine to display stop indication in absolute signal at the entrance to each end of limits and place red tags on levers controlling such absolute signals. When receiving clock time and movement limits track car operator must make a written record of the time and limits, repeat the clock time and limits to train dispatcher and receive his acknowledgment that they are correct.

"Upon expiration of clock time train dispatcher will release track for train movement; therefore, track car must be clear of track before clock time expires." (Emphasis added.)

A similar rule governs the activities of dispatchers who control train operations in CTC. The complaint asserts that the rule is unsafe since dispatchers are expected to release trains into a previously occupied CTC block at the expiration of the clock time, without positive assurance that the track is indeed clear. The complaint seeks a modification of the rule which would require the operator to confirm that the track is clear before the dispatcher permits trains to enter.

Defendant's answer in addition to denying the material allegations of the complaint, and asserting the adequacy of its present rule, also challenged the Commission jurisdiction to regulate operating rules. The jurisdictional challenge was based on the Commerce Clause of the Constitution of the United States. Oral argument on the jurisdictional questions was held in San Francisco on December 8, 1969.

At hearings held in San Francisco on May 5, 6, and 7, 1970, complainant's witnesses were representatives of Dispatchers, Signalmen and Maintenance of Way personnel; a dispatcher was also called. Defendant called its Chief Dispatcher and its Assistant Chief Engineer. The matter was submitted upon receipt of briefs on July 6, 1970.

Discussion

The track cars we are primarily concerned with herein are small, light-weight rail vehicles capable of carrying two or four men. They are designed so that one man can easily remove them from, and replace them on, the tracks at a "set-off", a built up platform between and beside the tracks, designed for that purpose.^{1/}

^{1/} There are larger vehicles which are sometimes used. With either type the rules require sufficient crew to be able to perform the set-offs.

The highway at a grade crossing will also permit easy set-off. The vehicles can also be set off with more difficulty at any track location and in an emergency one can tip such a car off the rails. The track cars are sometimes operated with only a single occupant.

Trains operating in CTC territory close an electrical circuit between the rails, thus providing the remotely located dispatcher with a reliable indication of their location. Track cars, on the other hand, are designed with electrically isolated wheels so that the CTC dispatcher can be assured of their location only through telephonic communications and time assignment.

For some time prior to July 1, 1968, the defendant had voluntarily adopted a rule providing for positive track release similar to the Brotherhood proposal on portions of its system. On other portions it had the present rule. In the interests of uniformity the present rule was adopted system-wide at the urging of the Commission staff.

The Brotherhood's witnesses stressed the possibility that the present rule would endanger an operator travelling alone who had been disabled by accident or sudden illness. Similarly, a misunderstanding between dispatcher and track car operator as to the length of clock time or simple negligence could also produce an accident.

In S.P.'s two years of experience with the present rule there has not been a single personal injury attributable to the lack of a fail-safe rule. The circumstances which would produce such an accident are unlikely. An injury could occur only when an occupied car is involved. The record is unequivocal that a collision with a track car poses no threat to the train crew. In most cases the track car's occupants would perceive an approaching train in time to

abandon the car before the collision. Practically speaking then, unless an employee were operating a car by himself, and became suddenly and totally disabled, personal injury could be avoided.

The evidence regarding possible personal injuries was at best speculative. In contrast there has been at least one proven instance of delay arising under a rule similar to that proposed. In the incident described in the record, which occurred while part of defendant's system was operated under a fail-safe rule, a track car operator neglected to release a segment of track preventing all operations on a main line for several hours.

Since two other major California railroads operated under a fail-safe rule, there was surely sufficient experience which complainant could have drawn up on to demonstrate that operational delays would be rare. They have failed to do so. Our expertise leads us to conclude that operational delays would be of sufficient frequency and severity to significantly and adversely affect defendant's capacity to render expeditious service to shippers and receivers.

Such delays would be injurious to the public; they would also injure defendant causing diversion of traffic to other carriers, and in the case of agricultural commodities cause shipments to miss market with attendant monetary penalties against defendant.

Because of the conclusion reached herein, it is unnecessary to decide the jurisdictional issues raised by defendant.

We find that:

1. Complainant's prediction that accidents will occur because of the lack of a fail-safe provision in the present rule is unsupported.

2. A fail-safe provision will produce operational delays.

3. It has not been demonstrated that such delays will be infrequent or short enough to be tolerable.

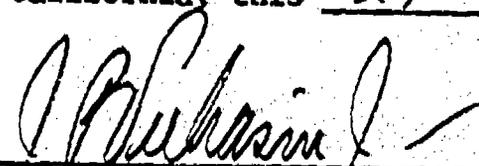
We conclude that the complaint should be dismissed.

O R D E R

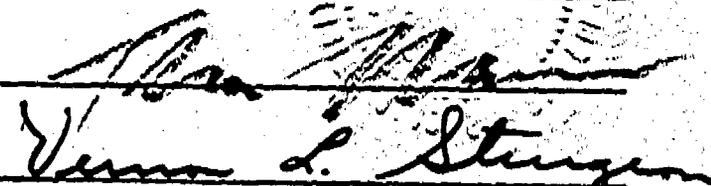
IT IS ORDERED that the complaint is dismissed.

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

Dated at San Francisco, California, this 27th day of OCTOBER, 1970.



Chairman



Commissioners

Commissioner William Symons, Jr., being necessarily absent did not participate in the disposition of this proceeding.