

ORIGINAL

Decision No. 78418

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)David A. Norwitt, Attorney at Law, for complainant.  
John J. Corrigan, Attorney at Law, for defendant.O P I N I O N

This is a complaint by an outdoor movie theatre that defendant railroad willfully 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 filed a general denial and moved for dismissal on the ground that the Commission is without jurisdiction over the cause. Said motion was denied in Decision No. 76754, dated February 10, 1970. Hearing was held in the complaint on December 17, 1970, before Examiner Thompson at San Francisco, and the matter was submitted.

The relief sought by complainant is set forth in the prayer in the complaint:

"Wherefore, complainant requests an order forbidding the use of any bright lights or Mars lights in the vicinity of the SPARTAN AUTO MOVIE and imposing such damages and penalties as the

Commission may deem just in order to prevent a further reoccurrence of the violation of said order of the Public Utilities Commission of the State of California."

The order of the Commission in Decision No. 73354, which amends the order in Decision No. 72783 (Associated Theatres v. Southern Pacific Company, 67 Cal. P.U.C. 404) provides:

"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."<sup>1</sup>

Complainant's projectionist testified that during 1968 he worked at the Spartan Auto Movie as projectionist except during the period June 19 through November 12 and that he had a calendar on the wall of the projection booth on which he made notations of certain events and occurrences including the shining of lights on the movie screen. The calendar (Exhibit 1) has the following notations relevant to the issues in this complaint:

January 20	Swinging Red Mars Light 8:00 - Blur
February 1	9:40 3-5 Sec.
February 10	9:35 10 Sec.
February 29	8:10 15 Sec.
March 13	7:40 Wiped out 1-1/2 minutes
March 27	9:15 10 Sec.
April 2	8:32 75 Sec.
May 1	9:42 15 Sec. 10:05 1 minute
May 3	1:50 30 Sec.

The witness testified that the notations indicate the time and duration of a light shining upon the movie screen. He said he kept a calendar for the year 1969 and made notations thereon of events and occurrences. This calendar was not offered in evidence. He stated that in connection with his observations of the lights on

<sup>1</sup> In November 1969 the name of Southern Pacific Company, a Delaware corporation, was changed to Southern Pacific Transportation Company.

the screen he could not view the source of the light because of the 16-foot high fence between him and the source. At the time of the incident on January 20, the swinging red light was on the screen for five minutes and he heard a locomotive while the swinging red light was flashing on the screen. At another time, which is not stated, through the unrepaired section of fence, he observed a locomotive on the second track away from the fence.<sup>2</sup> With respect to the occurrences indicated above the witness was unable to state that at the time the light was on the screen the light emanated from a locomotive of defendant, was a bright light or a dim light or the location of the locomotive. There were a number of other occasions when lights appeared on the screen interfering with the projection of the movie but he had not made notations of those occurrences. He estimated the number of times to average about three per week.

The manager of complainant testified that he has observed many instances when light falls upon the screen and that it averages three or four times per week. He is able to distinguish between the bright light and the dim light of a locomotive upon the screen in that the bright light completely washes out the picture, whereas the dim light causes a fading of the picture but does not wash it out completely, and the bright light projects silhouettes of the trees and telephone poles upon the screen, whereas the dim light does not cast such shadows. He did not fix the time or date of any of the occasions when the lights interfered with the projection upon the screen other than to state that several weeks before the hearing, while the theatre was showing "Mad, Mad World", an intense light swept back and forth on the screen projecting shadow images of the

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<sup>2</sup> At that point the second track away from the fence would be a Southern Pacific Company lead track designated in Decision No. 72783 as Track No. 3, S.P. lead track (Old Main Line).

trees and telephone poles on the screen and completely wiped out the picture projected thereon. "The train came south of the intersection (East Alma Avenue), came right on past the theatre and at all times had the bright light on."

Defendant admits having received prior to March 25, 1969 a copy of the projectionist's calendar for 1968. It did not present evidence.

We now consider the evidence in connection with the prayer to the complaint. First, the Commission is without power to award damages to complainant with respect to the cause stated in its complaint (Section 2106, Public Utilities Code). With respect to the imposition of penalties on defendant, the Commission has power to punish for contempt in the same manner and to the same extent as contempt is punished by courts of record (Section 2113, Pub. Util. Code), it may prosecute an action in the name of the People of the State of California in the courts to recover penalties, in an amount of not less than \$500 nor more than \$2,000 for each offense, for failure by defendant to comply with any part or any provision of any order of the Commission (Sections 2104, 2107, Pub. Util. Code). Prosecution of such actions requires evidence which will support findings that defendant did the thing or things which were prohibited.

With respect to the January 20, 1968 incident, there is evidence that for five minutes commencing at 8 p.m. a swinging red light appeared on the movie screen, that it emanated from the direction of the railroad tracks, and that there was a train on one of the tracks. Although it was not shown on this record, it is within the knowledge of the Commission that there are Mars lights which will project a red light in an oscillating pattern, but that such

light ordinarily is activated automatically when there is a sudden reduction in air in the air brake system. When the Mars light is turned on from a switch in the cab of the locomotive the light projected is an oscillating white light. There are six tracks in the vicinity of the theatre and the oscillating red light of a Mars light could have been projected from a locomotive on any one of the six tracks. The defendant operates on four of the tracks and the Western Pacific Railroad Company operates on two of the tracks.

In connection with the March 13, 1968 incident, the evidence shows that commencing at 7:40 p.m. a light of such intensity to wipe out the movie image was projected on the screen for 1-1/2 minutes. There is evidence that a dim light from a locomotive is not of sufficient intensity to wipe out the picture on the screen. There is also evidence that the bright light from a locomotive located south of East Alma Avenue has resulted in wiping out the picture on the movie screen. The evidence here will not support a finding that the bright light emanates from a locomotive of defendant while engaged in operations between East Alma Avenue and Keyes Street.

Regarding the other incidents specified by the projectionist, there is no evidence showing that the light on the screen emanated from a bright light or a dim light, or if it were a bright light that it emanated from a locomotive of defendant while engaged in operations between East Alma Avenue and Keyes Street.

There is evidence showing that at some time on a date in November or December 1970 during the showing of "Mad, Mad World" the beam of an oscillating white light wiped out the picture on the screen and that the light emanated from a locomotive operating between East Alma Avenue and Keyes Street. The evidence is sufficient to establish that the light emanated from a Mars light on a

locomotive. It is not sufficient for a prima facie showing that the locomotive was defendant's nor will it establish when the action took place.

The evidence herein will not support a finding that at a particular time defendant, while operating between East Alma Avenue and Keyes Street, directed the bright light or Mars light on its locomotive towards the screen of complainant.

Complainant, in the alternative, seeks an order which will forbid the use of any bright lights or Mars lights in the vicinity of its theatre. The evidence here shows that complainant is inconvenienced only when the lights from the locomotives are directed onto the screen and not when lights are directed away from the screen, such as those on a locomotive proceeding north from Keyes Street. That is also consistent with the findings in Decision No. 72783. The Commission's order in said decision, as amended by Decision No. 73354, requires defendant to 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. There are findings in the aforesaid decision that the use of bright headlights and Mars lights by defendant in that area are unnecessary under usual and ordinary circumstances for the safety of operations. The decision points out, however, that there may be unusual and extraordinary circumstances which would warrant the use of the bright headlights and Mars light. A prohibition of the use of any bright headlights on locomotives by defendant while engaged in operations between East Alma Avenue and Keyes Street would be inconsistent with the findings in said decision. There is

nothing in this record which would indicate that the aforesaid findings are erroneous. As was previously observed, there is some evidence that the bright headlights on locomotives operating south of East Alma Avenue may interfere with the projection of the movie onto the screen. This record, however, does not permit a determination of the point or points on defendant's tracks south of East Alma Avenue at which the bright lights would provide no greater interference with the movie than the shining of the dim lights on the screen from points nearer the theatre.

There was other testimony by the projectionist and the manager that at times which were not specified lights from the direction of the tracks would be directed upon the screen and would be alternately dimmed and brightened to coincide with the action taking place in the scenes of the motion picture. Again, this could not be directly attributed to defendant. While complainant has not sustained the burden of proving the allegations in its complaint, and therefore the relief sought by it must be denied, the evidence herein does show that since the effective date of Decision No. 73354 bright headlights and Mars lights from someone's locomotive from points somewhere on railroad tracks south of complainant's screen have been directed onto said screen and has caused inconvenience to complainant and its patrons, and with greater frequency than one reasonably might expect would result from unusual or extraordinary conditions of railroad operations. A continuance of such happenings might warrant the Commission instituting an investigation on its own motion to determine whether different or more stringent regulations directed toward all railroads operating in the vicinity of the Spartan Auto Movie are necessary to eliminate unnecessary inconvenience to complainant and its patrons.

We find that complainant has not shown that defendant willfully and deliberately unnecessarily caused the bright headlights or Mars lights of defendant's locomotives to be directed towards the screen of the Spartan Auto Movie while engaged in operations between East Alma Avenue and Keyes Street in San Jose.


We conclude that the complaint should be denied.



O R D E R


IT IS ORDERED that the above-entitled complaint filed by Associated Theatres, Inc., be and it is hereby denied.

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

Dated at San Francisco, California, this 9<sup>th</sup> day of MARCH, 1971.

  
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Chairman

  
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Commissioners

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