

ORIGINAL

Decision No. 78877

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the safety, maintenance,
 operation, use and protection or closing of
 the crossings at grade of Railroad Avenue
 with tracks of Southern Pacific Transporta-
 tion Company, Crossing No. B-48.9, and The
 Atchison, Topeka and Santa Fe Railway
 Company, Crossing No. 2-1155.7, in the City
 of Pittsburg.

Case No. 9199
 (Filed March 9, 1971)

Neal W. McCrory, Attorney at Law, for
 The Atchison, Topeka and Santa Fe
 Railway Company; Harold S. Lentz,
 Attorney at Law, for Southern Pacific
 Transportation Company; and Roger Golla,
 Attorney at Law, for City of Pittsburg;
 respondents.
William David Figg-Hoblyn, Attorney at Law,
 for the Commission staff.

INTERIM OPINION

This proceeding is in essence an investigation to determine whether upgraded crossing protection should be installed at the crossings in question. It should be noted that while the dispute over such installation was the primary reason for this proceeding, the Order Instituting Investigation herein indicated that one of the purposes is to determine "...whether any other order or orders shall be issued by the Commission in the lawful exercise of its jurisdiction."

The City now has an ordinance dealing with crossing blocking:

"Section 524.1. Trains Not to Block Crossings. It shall be unlawful for any person to cause or permit any railway train or railway cars or similar vehicle on rails to operate or to be operated in such a manner as to prevent the use of any street for the purposes of travel for a period of time longer than five (5) minutes, except that this provision shall not apply to railway trains, cars or similar vehicles on rails while blocking or obstructing a crossing because of an accident which requires the operator of the train, car or similar vehicle on rails to stop at or near the scene of the accident. For purposes of this section an accident is described as an unforeseeable occurrence on the railway right-of-way or involving the railway train whereby the railway train or railway cars cannot be moved without endangering the safety of the public, passengers, private property or freight."

It attempts to enforce this ordinance by a series of criminal actions in the Municipal Court.

Southern Pacific Transportation Company (Southern Pacific) claims that it is impossible to comply with this ordinance without making drastic reductions in train length and suffering other operational difficulties. It has, therefore, filed a motion seeking, under the above-quoted Order Instituting Investigation provision, to have the Commission determine the validity, effectiveness and applicability of the City Ordinance. Oral argument on the motion was held before Examiner Gilman on May 17, 1971, in San Francisco.

Southern Pacific claims that the City is without jurisdiction to regulate crossing blocking. It argues that the subject matter is either exclusively a matter of Commission jurisdiction so that the City could not act even in the absence of Commission action or that, even if the matter were of concurrent jurisdiction, the Commission has acted. The latter claim is based on Commission Resolution S-1278 which requires each California railroad to adopt

crossing blocking rules and the Order Instituting Investigation in Case No. 8949^{1/} which ordered each railroad to comply with those rules until a final set of rules is adopted in that proceeding.

The City concedes that, if the Commission were to act in such a manner as to occupy the field, the City ordinance would be thereby superseded (In re Lane, 58 Cal. 2d 99). However, it contends that no such occupation has yet occurred. It argues that the above-quoted paragraph in the Case No. 8949 Order Instituting Investigation is not sufficient to occupy the field of regulation, leaving the City free to impose more restrictive standards.

The staff's position is that this is an inappropriate proceeding in which to raise this issue. It argues that Southern Pacific, if it wishes interlocutory relief, should seek it in Case No. 8949, since crossing blocking is only incidental to the question of protection at this crossing. It further asserts that no interlocutory relief should be granted to Southern Pacific absent a showing of irreparable injury.

The Atchison, Topeka and Santa Fe Railway Company has not been involved in any attempts by the City to enforce its ordinance. It takes the position, however, that the City is without jurisdiction to regulate crossing blocking.

Discussion

In common with any other tribunal, the Commission has the initial responsibility to determine whether a matter is within its jurisdiction. By entering in Case No. 8949 an enforceable temporary regulation on its face applicable to each railroad and each grade crossing in Case No. 8949, the Commission has impliedly held that it has jurisdiction over crossing blocking matters and has exercised that jurisdiction.

^{1/} "Pending further order herein each railroad corporation is ordered to comply with its rules filed pursuant to Commission Resolution S-1278."

If, as Southern Pacific contends, the City's ordinance is invalid, the Municipal Court will presumably so determine. If Southern Pacific is dissatisfied with the determination of that Court, it has ample methods of seeking redress in the courts.

Even if we were to undertake the proposed enquiry, and even if Southern Pacific were now to establish the alleged deficiencies in the ordinance, we can conceive of no order within the scope of our jurisdiction which would relieve Southern Pacific of the necessity of defending its position in the courts.

We conclude that Southern Pacific's motion should be denied.

INTERIM ORDER

IT IS HEREBY ORDERED that the motion is denied.

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

Dated at San Francisco, California, this 27th day of JUNE, 1971.

[Signature]
Chairman
[Signature]
[Signature]
[Signature]
Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.