

Decision No. 82130

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

STATE OF CALIFORNIA, DEPARTMENT  
OF PUBLIC WORKS,

Complainant,

v.

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY, THE ATCHISON, TOPEKA AND  
SANTA FE RAILWAY COMPANY, THE  
WESTERN PACIFIC RAILROAD COMPANY,  
and UNION PACIFIC RAILROAD COMPANY,

Defendants.

Case No. 9465  
(Filed November 1, 1972)

Joseph C. Easley and D. J. Solander, Attorneys  
at Law, for State Department of Public Works,  
complainant.

Harold S. Lentz, Attorney at Law, for Southern  
Pacific Transportation Company; Richard W.  
Bridges, Attorney at Law, for The Western  
Pacific Railroad Company; Thomas A. Lance,  
Attorney at Law, for The Atchison, Topeka  
and Santa Fe Railway Company; and Marshall W.  
Vorkink, Attorney at Law, for Union Pacific  
Railroad Company; defendants.

O P I N I O N

The complaint alleges that defendants were parties in Case No. 8249; that Ordering Paragraph 10 of Decision No. 72225 dated March 28, 1967 in Case No. 8249 ordered defendants to initiate a study of the feasibility of maintaining accurate actual cost records of the maintenance cost of automatic grade crossing protection in California, and ordered the other parties to cooperate in the making of such study;

that defendants have willfully refused and failed to make the study ordered by the Commission; that despite defendants' failure to comply with Ordering Paragraph 10 of Decision No. 72225, defendants and each of them filed Petitions for Modification of Decision No. 72225, wherein they request an increase in the cost of \$30 per relative unit value established by said decision; that complainant was a party to Case No. 8249 and was, and remains, ready and willing to cooperate with defendants in making the study ordered by the Commission; further, that as a result of defendants' willful refusal to comply with the Commission's order, complainant has paid a substantial sum of money to each of the defendants as the public's share of the expense of maintaining the automatic protection at grade crossings, without having any assurance that the sums paid bear any relationship at all to the actual costs incurred by said defendants. The complaint requests that all defendants be held in contempt; that defendants be directed to initiate the study; that Decision No. 72225 in Case No. 8249 be set aside until the study is concluded and that defendants' petitions to modify Decision No. 72225 be dismissed.

Ordering Paragraph 10 of Decision No. 72225 reads as follows:

"Each of the railroad company parties to this proceeding is directed within 30 days after the effective date of this Order, to initiate studies, either individually or collectively, to determine the feasibility of maintaining accurate actual cost records of the maintenance cost of automatic grade crossing protection in California, and the feasibility of developing a relative unit system method of determining such costs restricted to signal system components utilized in California by said railroad companies and based upon costs incurred in California by said railroad companies. The Commission's staff and other parties hereto are directed to cooperate in all respects in the making of the studies herein ordered."

"The Commission shall in the future institute an investigation to receive the results of the studies and determine if any modification of this order is required."

Decision No. 72225 decided that the share of the annual cost of maintaining railroad crossings to be paid by public agencies would be \$30 for each relative unit authorized in the tables adopted by the American Association of Railroads. The AAR table lists every individual segment of protective equipment which can be installed at a railroad crossing and allocates a unit value to each item. The unit values normally range from 1 to 12, although some totals exceed 75. The annual allowance for the maintenance of the automatic protection at any grade crossing is therefore obtained by multiplying \$30 by the total number of units assigned to the protective equipment installed at the crossing.

During September of 1971 the Southern Pacific Transportation Company, The Atchison, Topeka and Santa Fe Railway Company, Union Pacific Railroad Company, and The Western Pacific Railroad Company petitioned to modify Decision No. 72225 to increase the allowance from \$30 to approximately \$51 per unit. During November 1972 and January-February 1973 hearings the railroads presented evidence to justify the increase in cost, including an estimate of the percentage of increased cost from the date of the decision to the November 1972 hearings. The Department of Public Works opposed the petition of the railroads and presented evidence to justify using the actual cost of maintaining each crossing as a basis for determining maintenance payments rather than the relative unit system. A motion to consolidate Case No. 8249 and Case No. 9465 was denied.

Each of the defendants filed an answer to the complaint. They alleged that the Commission has not as yet instituted an investigation to accept the results of the studies, as required by paragraph 10, and defendants cannot present their findings until this action is taken. A series of Motions to Dismiss the complaint

and pleadings in opposition thereto were filed, including a motion to orally argue before the entire Commission. A hearing was held in San Francisco on April 30, 1973, before Commissioner Vukasin and Examiner Fraser, to hear arguments on the motions to dismiss the complaint filed by all of the defendants.

Defendants argued that until an investigation is instituted to receive the results of the studies, the railroads have no place to submit their conclusions and no state agency can complain of possible damage resulting from delay. It was further argued that a willful failure to obey a lawful order is a misdemeanor (Penal Code Sec. 166, Sub. 4) with a one-year statute of limitations (Penal Code Sec. 801) dating from the September 1971 filing date of the Petitions to Modify Decision No. 72225. It was emphasized that paragraph 10 merely orders that studies be made to determine which of two systems is the most feasible. How the studies are made, who participates, and how the results are to be reported is left to the defendants to determine. It was alleged that defendants were all represented at two meetings held in 1967 after the order was issued. The decision was discussed at the first meeting and each of the four committee members returned to his own railroad to discuss the possibility of converting to actual maintenance cost with engineer and accounting personnel. The representatives then held the second committee meeting and relying on the information received decided that it was not feasible to maintain accurate records of grade crossing maintenance costs.

The Department of Public Works argued that Decision No. 72225 must be read in its entirety and when so considered reveals that the railroads were ordered to complete a formal study of the feasibility of the two methods of determining the cost of maintaining grade crossings.

#### Discussion

It is evident from the record in both proceedings that defendants support the feasibility of the relative unit system.

There is considerable testimony from defendants' witnesses which emphasizes the cost, inconvenience, and impracticality of adopting the actual cost system recommended by the complainant. Defendants have satisfied the basic requirements of paragraph 10 and the motion to dismiss should be granted. The study of both systems should be continued under the guidance of a staff investigation which will be instituted as provided herein.

The Commission finds and concludes that the motion to dismiss Case No. 9465 should be granted and that the staff should be directed to institute an investigation as provided in the following ordering paragraphs.

O R D E R

IT IS ORDERED that:

1. The complaint in Case No. 9465 is dismissed.
2. Within one hundred twenty days after the effective date of this order, the Commission staff is directed to institute an investigation of the cost of maintaining the automatic protection at railroad grade crossings in California for the purpose of determining whether the present system is less costly and more feasible than using the actual cost of maintaining the automatic protection installed at every grade crossing in California. The Commission staff will report its findings and recommendation to the Commission within twelve months or less from the date of this order, unless extended by a further order of this Commission.

All parties herein are directed to cooperate with the staff in all respects to expedite the investigation.

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

Dated at San Francisco, California, this 13<sup>th</sup> day of NOVEMBER, 1973.

William L. Sturgeon  
President

J. M. Moran

[Signature]

[Signature]  
Commissioners

I dissent,  
William L. Sturgeon  
Commissioner

Commissioner THOMAS MORAN did not participate in the disposition of this proceeding.