

Decision No. 82715**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

STATE OF CALIFORNIA:
DEPARTMENT OF PUBLIC WORKS,

Complainant,

vs.

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

Defendants.

Case No. 9465

(Filed November 13, 1972)
Petn. for Rehg. Filed
December 4, 1973)OPINION AND ORDER DENYING REHEARING
AND AMENDING PRIOR ORDER

On November 13, 1973, we issued Decision No. 82130 dismissing a complaint brought by the State of California, Department of Transportation (DOT), formerly the Department of Public Works, against the above-named defendants.

On December 4, 1973, DOT petitioned for rehearing alleging that dismissal of its complaint was not supported by sufficient findings of fact. DOT asks that defendants be held in contempt for willful failure to comply with Decision No. 72225, that Decision No. 72225 be suspended pending an investigation of the cost principles adopted therein; and that defendants' petitions to modify Decision No. 72225 be suspended pending the aforementioned investigation.

Defendants Southern Pacific Transportation Company (SP) and Western Pacific Railroad Company (WP) have moved to dismiss DOT's petition as being untimely filed. The effective date of our order was December 3, 1973. DOT filed its petition one day after that date, on December 4, 1973.

A close reading of Decision No. 72225 indicates to us that enforcement of its provisions is impossible due to the vague nature of the directive to the parties in Ordering Paragraph No. 10 ^{1/} Ordering Paragraph No. 10 of Decision No. 72225 ordered the railroad companies to initiate studies to determine the feasibility of maintaining actual cost records for maintenance of grade crossing protection in California, and the feasibility of developing a relative unit system of determining maintenance costs of signal system components utilized in California. The defendants maintain that they have indeed complied with Decision No. 72225 and that they have initiated such studies.

DOT states that it is impossible for this Commission to find "both that the railroad defendants have complied with Ordering Paragraph 10 and that a new study must be initiated."^{2/} The Commission stated in Decision No. 72225 that it would ultimately be necessary to institute an investigation to determine if a change in the policies set out in that decision was necessary. An investigation by the staff has been initiated by Ordering Paragraph 2 in Decision No. 82130.

DOT equivocates our statement that the defendants have complied with the "basic requirements" of Decision No. 72225 with the notion that sufficient study and investigation has been done for this Commission to make a determination. As we have stated hereinabove,

1/ Paragraph 10 states:

"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."

2/ Petition, p. 5, para. III.

Decision No. 72225 was and is unspecific in its requirements, and, as defendants have asserted, they have "initiated" studies. Obviously, that decision has produced only confusion and technical legal arguments over its language rather than concrete results useful to this Commission. For that reason we have, in Decision No. 82130, directed the staff to institute an investigation to provide us with the information that we require.

DOT also expresses concern about past amounts which have been paid to the defendants. In this regard, DOT seeks a suspension of Decision No. 72225 until our investigation has been completed as well as a suspension of defendants' petitions to modify Decision No. 72225. However, in Decision No. 72225, we permitted the use by defendants of the American Association of Railroad (AAR) relative cost method, at least until a superior method is developed. (Decision No. 72225, p. 10.) In the staff investigation ordered pursuant to Decision No. 82130, an analysis will be furnished to us which will aid us in determining whether or not a modification of the principles set out in Decision No. 72225 is warranted. In the interim, Decision No. 72225 is the controlling decision in this matter and it should not be suspended, nor should defendants be prevented from petitioning to modify the unit values set out therein.

DOT's remaining contention is that the defendants should be held in contempt for willful failure to comply with the provisions of Ordering Paragraph 10 of Decision No. 72225. Defendants, through counsel, have challenged DOT's allegation that they wilfully disobeyed our order in Decision No. 72225 on a variety of grounds including the vagueness of the order and that action on the contempt allegation is barred by the Statute of Limitations. As we have indicated, our review of that decision convinces us that an order directing initiation of studies to "determine the feasibility..." is a vague directive which does not lend itself to ready compliance or enforcement. Based on our review of that order, we are of the opinion that contempt proceedings

would not be proper or successful in enforcing an admittedly vague order. We shall dismiss DOT's complaint as to this issue.

IT IS THEREFORE ORDERED that, for the reasons and conclusions stated above, rehearing of Decision No. 82130 is hereby denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 9th day of APRIL, 1974.

Vernon L. Sturgeon
President
William J. Symons, Jr.
William J. Symons, Jr.
William J. Symons, Jr.
William J. Symons, Jr.
Commissioners