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ORIGINAL

Decision No. 82935

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)

O P I N I O N

On February 19, 1974 Southern Pacific Transportation Company (SP) filed a petition for the immediate issuance of an order with respect to the issue of the validity of the city of Pittsburg's ordinance,^{1/} which purports to regulate crossing blocking and train

1/ "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.

"524.2 It shall be unlawful for any person, firm or corporation owning, operating or controlling any railroad train or part thereof in the City of Pittsburg to cause, permit or allow said train or part thereof, to pass over, along or upon any of the public streets or highways of the City of Pittsburg or any other place within said City at a greater speed than twenty-five (25) miles per hour. (Ord. 428)"

speeds, without waiting for an Examiner's Proposed Report. SP alleges that since the filing of the last briefs in this case (November 1972) the Commission has conclusively disposed of one of the disputed issues of law involved here.^{2/} SP therefore requests that since it is seeking to have a strictly legal issue determined now, there is no need to wait upon the issuance of an Examiner's Proposed Report dealing with all of the issues of fact and law involved. SP acknowledges that the Commission has previously acted upon a similar motion it made.^{3/} However, SP asserts that the decision is so ambiguous that the issue has continued throughout the proceeding.

On April 9, 1974 the city of Pittsburgh (City) filed a response to SP's petition. City alleges that SP is seeking to avoid the processes and rules established by the Commission by petitioning for an immediate order and by-passing the Examiner's Proposed Report. It alleges that Decision No. 82398, cited by SP as disposing of the issue of validity of city ordinances purporting to regulate or impose conditions upon railroads in connection with grade crossings, is not applicable here. City also contends that since a General Order

^{2/} Decision No. 82398 dated January 29, 1974 in Application No. 54132 held that the Commission's jurisdiction over grade crossings and the apportionment of costs and maintenance thereof is exclusive.

^{3/} Decision No. 78877 dated June 29, 1971. Motion for separate trial and determination, in advance of all other issues, of the validity, effectiveness, and applicability of Sections 524.1 and 524.2 of the Municipal Code of the city of Pittsburgh denied.

regulating occupancy of grade crossings has not been issued, the Commission has not acted with respect to this particular facet of grade crossing regulation. Lastly, City contends that "if in fact local ordinances attempting to regulate crossing blockings and train speed are void ab initio, even in the absence of any commission regulations on the subject,...then the proper remedy for SP is to proceed in the courts to enforce this clear and unequivocal statement of the law."

On April 19, 1974 SP filed its reply to City's response to SP's motion. By letter of March 21, 1974, the Brotherhood of Locomotive Engineers (BLE) advised the Commission that the City has cited four of its members for alleged violations of its railroad grade crossing ordinance. BLE supports SP's petition for an immediate decision on the legal question of the validity of City's ordinance regulating crossing blocking and train speed.

Discussion

Shortly after the order instituting this investigation was filed, SP moved for a separate trial and determination, in advance of all other issues, of the issue of the validity, effectiveness, and applicability of Sections 524.1 and 524.2 of the Municipal Code of the City. Oral argument on the issue was granted and SP's motion was denied^{4/} on the grounds that the Municipal Court could determine the validity of the ordinance, and if such determination were contrary to SP's contention it has ample methods of seeking redress in the courts.

^{4/} Footnote 3, supra.

SP's current motion again seeks to have the legal issue of the validity of City's ordinance determined before the remaining issues in the case are decided. It alleges that the order denying its original motion was so ambiguous that the jurisdictional question has continued to be an issue in the case. It also alleges that the denial of the motion was a denial of an advance determination and therefore provided no reasonable grounds for appeal.

This investigation has been the subject of many days of hearing and briefs, and we have authorized the preparation of an Examiner's Proposed Report for the benefit of the parties. In the meantime we have not only ruled upon SP's initial motion, but we have also issued a final order limited to the upgrading of crossing protection.^{5/} The issues of cost allocation, crossing blocking, and train speeds were deferred pending the taking of further evidence. Further evidence has been adduced and the matter awaits the Examiner's Proposed Report.

Although we denied SP's initial motion to determine the legal issue regarding City's ordinance, we are now of the opinion that this issue should be determined.

The legal issue at bar is a justiciable issue involving a controversy over the legal rights of the parties and does not involve other matters not cognate and germane to the regulation of public utilities. (Cf. Packard v PT&T (1970) 71 CPUC 469, 472-73.) It pertains to the regulation of grade crossings as to the length of

^{5/} Decision No. 79854 dated March 28, 1972.

time they may be blocked and train speeds over the crossing. Where the issues in a matter are mainly within the ambit of the Commission's regulatory jurisdiction, the Commission has primary jurisdiction to proceed with the determination of these issues. (Northwestern Pac. R.R. Co. v Superior Court (1949) 34 Cal 2d 454, 458; Orange County Air Pollution Control Dist. v Public Utilities Com. (1971) 4 Cal 3d 945, 950-51; Miller v Railroad Commission (1937) 9 Cal 2d 190, 197.)

Moreover the Commission not only has the power, but it has the duty, to apply applicable law to the facts of a proceeding before it. (Northern California Power Agency v Public Utilities Com. (1971) 5 Cal 3d 370; People v Western Airlines, Inc. (1954) 42 Cal 2d 621, 630-33.)

Rather than burdening this decision with a detailed analysis of the scope of our jurisdiction with respect to grade crossing matters, we refer the reader to Decision No. 82934 decided this day in Applications Nos. 52982, 53279, and 53280 for a detailed exposition of the law on this subject. In Decision No. 82398 dated January 29, 1974 in Application No. 54132, we pointed out that local ordinances and regulations are invalid if they attempt to impose requirements in a field that has been preempted by general law. We also pointed out that the field has been preempted by general

law and that such was the intent of the legislature as expressed in Section 1219 of the Public Utilities Code.^{6/}

City disputes the relevancy of Decision No. 82398 to the ordinance in question. It claims that said decision relates to apportionment of costs and not to the time a crossing may be blocked and the speed of trains over the crossing. City also claims that since we have not acted specifically with respect to crossing blocking time, the field has not been preempted. We do not agree with City.

6/ "1219. The Legislature declares that Sections 1201 to 1205, inclusive, are enacted as germane and cognate parts of and as aids to the jurisdiction vested in the commission for the supervision, regulation, and control of railroad and street railroad corporations in this State, and the Legislature further declares that the authority and jurisdiction thus vested in the commission involve matters of state-wide importance and concern and have been enacted in aid of the health, safety, and welfare of the people of this State."

"1202. The commission has the exclusive power:

- (a) To determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad or vice versa."

We have not only acted with respect to speed over crossings (Southern Pacific Transportation Co. (1970) 71 CPUC 181; City of Brentwood (1949) 49 CPUC 47; Southern Pacific Company (1964) 62 CPUC 524; Petition for Writ of Review denied June 16, 1965, SF No. 21934), but have also acted in the field of blocking time of grade crossings. (Resolution No. S-1278 dated May 27, 1969, "Adoption by Railroad Corporations of Acceptable Rules Re Occupancy of Public Grade Crossings"; Case No. 8949, Investigation Re Blocking of Public Grade Crossings; and Decision No. 81717 dated August 14, 1973 in Case No. 8949.) In each of these matters we ordered the railroads operating in California to observe specific time limits for blocking crossings. Furthermore, in Southern Pacific Co. (62 CPUC 524) an ordinance of the city of Turlock was involved which purported to regulate both the speed over crossings and the time during which a crossing could be blocked. The Commission authorized train speeds to be increased to 60 miles per hour contrary to Turlock's ordinance. The Commission also prescribed automatic protection devices be coordinated with traffic signals to control traffic during crossing closure. The validity of the ordinance was presented to the Supreme Court on a Petition for Writ of Review which was denied. A denial of a Writ of Review is a decision on the merits both as to the law and the facts presented in the review proceedings. (People v Western Air Lines, Inc. (1954) 42 Cal 2d 621.)

Not only have we acted in the area of crossing blocking and train speed over crossings, but we have done so under the comprehensive scheme of regulation of these matters set up by the legislature. (Chapters 6 and 6.5 of Part 1, Division 1 of the Public Utilities Code.) As stated by Chief Justice Gibson in his concurring opinion: "It is thus apparant that the enactment by the state of a comprehensive and detailed general plan or scheme with respect to a subject serves, without more, to occupy the field to the exclusion of local regulation." (In re Lane (1962) 58 Cal 2d 99, 106.)

Conclusions of Law

1. Regulation of railroads in California is a matter of state-wide concern and not a municipal affair.
2. Questions involving the need, location, installation, operation, maintenance, protection, blocking of, and speed over grade crossings, and the allocation of costs therefor are matters of state-wide concern and are exclusively within the jurisdiction of the Commission.
3. The Commission has jurisdiction to apply applicable law to the facts in a proceeding properly before it and in doing so may consider and pass upon municipal ordinances.
4. The provisions of City's ordinance challenged herein involve matters cognate and germane to the regulation of public utilities, a subject over which the Commission has been given jurisdiction.
5. The Commission has jurisdiction to determine whether the conditions in City's ordinance pertaining to railroads are reasonable.

6. Ordinance conditions which are beyond the jurisdiction of a municipality and which deal with matters whose regulation has been placed exclusively within the jurisdiction of the Commission are not "reasonable terms" within the meaning of Section 7555 of the Public Utilities Code.^{7/}

7. Sections 524.1 and 524.2 of City's ordinance are illegal, improper, void, and in excess of City's jurisdiction. The ordinance seeks to regulate a matter of statewide concern the jurisdiction over which has been delegated to this Commission.

^{7/} "7555. Use of municipal property; application; public hearing; required vote of governing body. No railroad corporation may use any street, alley, or highway, or any of the land, whether covered by water or otherwise, owned by the municipality within any city, unless the right to do so is granted by a two-thirds vote of the governing body of the city. If any railroad corporation operating within a city applies to the governing body of the city for a franchise or permit to cross any such street, alley, or highway, with main, branch, side, switching, or spur trackage, the governing body of the city, within a reasonable time, shall hold a public hearing upon the application after reasonable notice to the applicant and to the public and shall thereafter grant the franchise or permit applied for upon reasonable terms and conditions unless such governing body reasonably finds that the grant of the franchise or permit would be detrimental to the public interest of the city. Nothing in this section imposes any duty upon or limits the authority of, any city organized and existing pursuant to a freeholder's charter, or any officer thereof."

O R D E R

IT IS ORDERED that:

1. Pending further Commission order, the crossing blocking and train speed regulations applicable in the city of Pittsburg shall be as follows:

- a. For crossing blocking as prescribed in the Commission's Interim Order in Decision No. 81717 dated August 14, 1973 in Case No. 8949.
- b. For train speeds as prescribed in Southern Pacific Transportation Company's Western Division Timetable No. 1, issued October 28, 1973, and The Atchison, Topeka and Santa Fe Railway Company's Valley Division Timetable No. 19, issued March 6, 1974.

The respondent railroads shall observe the above regulations.

2. All other issues not specifically the subject of this order such as apportionment of costs and the need, if any, for imposition of special crossing blocking or speed restrictions in the city of Pittsburg, shall be disposed of through the Examiner's Proposed Report procedure we have previously authorized.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 29th day of MAY, 1974.

Vernon L. Sturgeon
President
William Lyman Jr.
[Signature]
[Signature]
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.