

Decision No. 84327

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of The Application of
SOUTHERN PACIFIC TRANSPORTATION COMPANY,
a Corporation, for Authority to Operate
Two Center Beam Bulkhead Flat Cars,
SCL 109015 and SCL 109016, In California
with Full Height Secure Ladders.

Application No. 54791
(Filed April 8, 1974)

W. A. Gregory, Attorney at Law, for applicant.
George E. Bodle, Attorney at Law, for United
Transportation Union, and J. L. Evans, for
California State Legislative Board of the
United Transportation Union, protestants.
Freda Abbott, Attorney at Law, and Herman W.
Privette, for the Commission staff.

O P I N I O N

Southern Pacific Transportation Company (SPT), a corporation, requests an exemption from the provisions of Section 2.5 of General Order No. 26-D in connection with the operation of two rail cars, SCL 109015 and SCL 109016, in California. The United Transportation Union (UTU) and the Commission staff opposed the sought deviation. Public hearing in the matter was held before Examiner Arthur M. Mooney in San Francisco on June 28, 1974, and it was submitted upon the filing of transcript on July 25, 1974.

Findings

The following undisputed facts are established by the record, and we find them to be such:

1. The two rail cars in issue have identical specifications. They are basically open cars with solid bulkheads at each end, a beam extending the length of the car from the top center of each of the solid end bulkheads, and 26 support panels which extend the length of the car from the middle of the floor to the center beam. Each center

beam has a cutout in it. The length of each car is 86 feet 9 inches over the strikers and 91 feet 5-1/4 inches over the couplers. The width is 9 feet 8-3/4 inches, and the height above top of rail to the top of the solid end bulkheads is 18 feet 5 inches. The center beam is 3 feet 2 inches in width. The cars have lowered hand brakes and full height, secure ladders, which have 10 rungs, are on the left, outside of the end bulkheads, and extend to the top of the cars. A diagram of the cars is included in Attachment A hereto. The cars were specifically designed for Seaboard Coast Line Railroad (SCL) for the transportation of purlins, a bulky, lightweight truss for building roofs, for the Butler Manufacturing Company. The cars are loaded through the open sides, and the lading is secured with web tie-downs. The full height, secure ladders are for personnel engaged in loading and unloading activities, who must move to and from the top of the center beam. A total of 30 such cars have been manufactured for SCL.

2. Unless the top four rungs of the full height, secure ladders are removed, the two cars cannot be operated in California without a deviation from Section 2.5 of General Order No. 26-D which provides as follows:

"If freight cars of a height greater than fifteen (15) feet six (6) inches are transported or proposed to be transported, minimum overhead clearances shall be increased by an amount of not less than such additional height provided that such cars are exempt from this subsection when the top running boards have been removed, ladders and hand brakes lowered, cars painted, stenciled, and otherwise modified in compliance with the provisions of Section 231.24 of Part 231, U.S. Safety Appliance Standards (railroad)."

3. The Arizona Corporation Commission, which also has shortened ladder requirements for excess height rail cars, authorized SPT by its Decision No. 43511 dated July 27, 1973 to operate cars SCL 109016, which is involved herein, and SCL 109011, which is an identical type of

car, in Arizona. The decision stated that the shortened ladder requirements were adopted for the protection of railroad employees who might climb to the top of excessive height box and other housing cars with roofs and that there appeared to be no hazard presented by allowing variance from this requirement for the type of car in issue provided that each such car is permanently marked, stenciled, or placarded to read "THIS CAR EXCESS HEIGHT". By its Decision No. 44124 dated May 6, 1974, the Arizona Corporation Commission authorized SPT to remove car SCL 109011 from service and replace it with SCL 109015, the other car involved herein.

4. With the exception of California and Nevada, SPT can operate this type of excess height, center beam car in all states in which it operates. The instant application has been filed for the necessary variance authority in California, and a similar application has been filed in Nevada.

5. By letter dated March 28, 1972 to the director of the Bureau of Railroad Safety of the Federal Railroad Administration, SCL pointed out that it had loads destined to California and certain other states which require lowered ladders for excess height cars and requested a deviation from the Federal Railroad Administration order of 1967 requiring full height, secure ladders for two of the center beam cars so they could be used in these states. By its reply dated April 27, 1972 the Bureau of Railroad Safety denied the request. The letter stated in part as follows:

"In our opinion, the cars involved are of special construction closely resembling gondola cars with fixed ends for safety appliance purposes. On such cars full height ladders are required to the extent that construction will permit. We have been informed there are occasions when activities of loading and/or unloading require men to move to and from the top of the center beams the same as with open top cars and covered hopper cars. Therefore, in our opinion, those cars require secure ladders and relief is inappropriate.

"Since those appliances are necessary to satisfy the requirements of the Safety Appliance Acts, no state can lawfully adopt requirements in conflict therewith."

6. SPT's rules and regulations of the Transportation Department include safety regulations. Until they are reissued, any changes in the rules and regulations are published in the Division Timetable and Special Instructions of all divisions of SPT. Rule M was revised to read as follows: "Employees are prohibited from getting on roof of cars except when necessary to make repairs". The revised Rule M was included in the Special Instructions Section of the Division Timetable and Special Instructions for all divisions published on or about October 1973.

7. Section 2.1 of General Order No. 26-D provides that the minimum overhead clearance above railroad tracks, which are used for transporting freight cars, shall be 22 feet 6 inches. For freight cars with a height not over 15 feet 6 inches, the clearance between the top of the car and an overhead structure would be 7 feet. For the two cars in question, the overhaad clearance would be 4 feet 1 inch. There are exceptions to the clearance rule in Section 2.1 for structures constructed prior to the effective date of the section and in Section 2.2 for clearances within buildings.

8. Section 11 of the Federal Safety Appliance Acts (Railroads) provides that it shall be unlawful for any railroad common carrier to haul any car not equipped with appliances provided in the act including secure ladders if required (45 USCA 11). Federal requirements regarding ladders on rail cars are set forth in the Railroad Safety Appliance Standards (49 CFR Part 231 et seq.). The Safety Appliance Standards require full height, secure ladders for box and other house cars with roofs under 16 feet 10 inches in height above the top of rail (Sec. 231.1) and for high side gondola cars with fixed or drop ends (Secs. 231.2 and 231.3). There are no height

requirements in the Safety Appliance Standards for box or other house cars with roofs 16 feet 10 inches or more above top of rail (Sec. 231.24) or for low-side gondola cars with fixed or drop ends (Secs. 231.4 and 231.5). For cars of special construction, the Safety Appliance Standards requires that they shall have as nearly as possible the same safety appliances, including ladders, as are required for cars of the nearest approximate type (Sec. 231.18).

Position of Parties

SPT

Counsel for SPT pointed out that the two cars in issue are excess height cars and that they would come within the exception in Section 2.5 of General Order No. 26-D if the ladders were lowered. He asserted that SPT would be willing to do this, but in view of the letter of April 24, 1972 from the director of the Federal Bureau of Railroad Safety to SCL stating that full height, secure ladders are required for this type of car, it cannot. He stated that these cars can now be operated with full height, secure ladders in all states in which SPT operates with the exception of Nevada and California and that SPT has requested authority to operate them with a full height ladder in each of the two states.

Following is a summary of the evidence presented by the assistant manager of personnel safety and the administrative manager of SPT: The purpose of the lowered ladder exception in Section 2.5 of General Order No. 26-D is to prevent railroad employees from going on top of excess height cars and thereby eliminating the possibility of their being injured by overhead obstructions when the cars are moving. The company's Rule M specifically directs personnel not to go on top of any rail cars. Any personnel disregarding this directive would be disciplined according to the applicable union agreement. Rule M is complied with by personnel and is strictly enforced by SPT. With the lowered hand brakes on the two cars in question, there is no reason for operating employees to go to or ride on top of the cars. There is likewise no reason for them to be on top of

the cars to pass signals. The only purpose of the ladders is for personnel to get to the center beam to tie down and untie freight during the loading and unloading operations which is accomplished with cranes.

In his closing statement, counsel for SPT asserted that the requested exemption is reasonable; that the center beam cars have been in use for two years in areas outside of California and there have been no injuries to personnel in connection therewith; that SPT rules prohibit employees from going on top of cars; that SPT is interested in the health and welfare of its employees and would not ask for the exemption if it thought it would cause any danger for them; that there has been no showing on this record of any violations of Rule M; and that he is of the opinion that the letter from the director of the Federal Bureau of Railroad Safety to SCL regarding full height ladders is controlling here.

UTU

No evidence was presented by UTU. A representative of the union stated that the fact that SPT has rules stating that employees shall not go to the top of cars does not prevent them from doing this; that it is a known fact that SPT does not enforce its own rules; that if the ladders were to be lowered, the four top rungs would be removed and this would amount to approximately 76 inches; that if it is necessary to have full ladders for loading and unloading, the shipper and receiver could have portable ladders for this; that if the application were to be granted, he is of the opinion that SPT would then request similar authority for all 30 center beam cars; that the full height, secure ladders would cause an unsafe condition for operating personnel; and that UTU objects to the sought authority.

Counsel for UTU, in his closing statement, argued that Section 2.5 of General Order No. 26-D is an important safety rule, and its requirements should not be relaxed; that the federal government

is now requiring that by 1977 all cars have their top running boards removed, their ladders shortened, and their hand brakes lowered; that the April 24, 1972 letter by the director of the Federal Bureau of Railroad Safety comparing the center beam cars to high-side gondola cars is incorrect and should have been questioned by SPT; that these cars are more closely comparable to the excess height box and house cars described in Section 231.24 of the Safety Appliance Standards, which do not require full height, secure ladders; that SPT operates hundreds of other types of cars in California that have lowered ladders and would not do this if it were a violation of federal law; and that he knows of numerous violations of Rule M where men have been knocked off or fallen off the top of box cars.

Staff

The staff position is identical to that of UTU. Staff counsel, in her opening statement, asserted that the clearance regulations in General Order No. 26-D are safety regulations clearly within the jurisdiction of California; that the opinion expressed by the director of the Federal Bureau of Railroad Safety in his letter of April 24, 1972 regarding the requirements of the Safety Appliance Act is in error; that if SPT were concerned about the safety of its personnel on top of the center beam cars, it could very well have challenged the director's interpretation; and that the staff feels that there are equally efficient methods of loading and unloading the cars without the necessity of the full height, secure ladders.

The following evidence was presented by an Associate Transportation Operations Supervisor of the Commission staff: In the early 1960's, SPT initiated a request to the Interstate Commerce Commission (now the Federal Railroad Administration) for removal of the top running boards and the lowering of long ladders and hand brakes on box and house-type cars. It solicited the assistance of the staff in

helping them justify this request for modification of the U.S. Safety Appliance Standards. SPT contended, and the staff concurred, that removing the means of access to the tops of cars would eliminate one of the major causes of accidents to employees which had resulted from being struck by overhead structures or falling while on top of cars. As a result of these efforts, the Interstate Commerce Commission modified Part 131 of the U.S. Safety Appliance Standards to permit box and other house-type cars with roofs 16 feet 10 inches or more above the top of rail to be constructed and used provided the top running boards were removed and the ladders and hand brakes lowered. Subsequent thereto and at the request of SPT, the Commission on May 16, 1972 by Decision No. 80051 modified Section 2.5 of General Order No. 26-D to provide the exemption for all rail cars in excess of 15 feet 6 inches in height if the top running boards were removed and the hand brakes and ladders were lowered. The cars in issue are approximately 19 inches higher than the 16 feet 10 inch high cars referred to in Part 131 of the Federal Standards and 35 inches higher than the 15 feet 6 inch height cars referred to in Section 2.5 of the general order. The request herein by SPT is inconsistent with its previous position and that of the staff regarding the use of excess height cars. Although SPT's Rule M prohibits employees from getting on roofs of cars except when necessary to make repairs, it is the staff's experience that rules and special instructions do not prevent accidents. This is evidenced by numerous accidents that have resulted from rail employees failing to adhere to various other rules of railroads. Substitute means, other than the full height ladders, could be used to gain access to the top of the center beams during loading and unloading activities. Although the center beam cars have no top running board, the 3 foot 2 inch beam could be used as such. The accidents in the Commission's records resulting from employees being on the tops of cars occurred eight or more years ago. The reason there have been no such recent accidents is the revisions

of the federal and state laws requiring the lowering of ladders on excess height cars. If the exemption is granted, with which the staff does not agree, it should be limited to the two cars specified in the application, and if there is a request to use any other cars of this type in the future, all interested parties should have an opportunity to examine them before such a request is considered by the Commission.

In her closing statement, staff counsel urged that the application be denied.

Discussion

We are of the opinion that the requested exemption for center beam cars SCL 109015 and SCL 109016 should be granted. According to SPT, these specially designed, excess height cars have been in use in various other states for in excess of two years, and, to its knowledge, there have been no injuries to any railroad personnel in connection with their use. Furthermore, SPT's Rule M specifically prohibits its personnel from being on top of any rail cars, including these, while the cars are being operated. While it is possible, as was pointed out by UTU and the staff, that personnel might violate rail operating rules, such possibility with this type of car appears remote. This type of car does not have a full roof. The center beam is merely 3 feet 2 inches in width, and the ladder is to the side of the beam. It is certainly unlikely that any personnel would risk being on top of the beam during the operation of the car. However, to emphasize the danger of being on top of these cars, SPT will be required, in addition to all other marking, stenciling, or placarding requirements in General Order No. 26-D, to permanently mark, stencil, or placard on the outside of each bulkhead of these cars between the ladder and the center of the bulkhead and at or near 15 feet 6 inches above top of rail the following: "WARNING - RESTRICTED OVERHEAD CLEARANCE FROM TOP OF CAR". Additionally, as

has been pointed out above, the only purpose of the full height ladders is for personnel engaged in loading and unloading operations to get to the top of the center beam.

Having determined that the application should be granted, it is not necessary to consider the jurisdictional question raised by the parties or whether the director of the Bureau of Railroad Safety in his letter of April 24, 1972 might have misinterpreted the Federal Safety Appliance Standards. It is to be noted, however, that the authority granted herein applies to the two cars specified only and to their operation by SPT.

Additional Findings

9. The two center beam bulkhead flat cars in issue have been used in various other states for over two years, and there have been no known injuries to rail personnel resulting from their operation.

10. The possibility of rail personnel being on the center beam of this type of car during its operation is extremely remote and is prohibited by SPT's Rule M referred to in Finding 6 above.

11. The operation of the two cars in California with full height, secure ladders should not create any hazard for operating personnel for SPT.

12. The requested deviation for the two specified cars is reasonable.

13. To assure that operating personnel are aware of the danger involved, SPT should be required to permanently mark, stencil, or placard on the outside of each end bulkhead of each car between the center of the bulkhead and the ladder at or about 15 feet 6 inches above top of rail the following:

"WARNING
RESTRICTED OVERHEAD
CLEARANCE FROM
TOP OF CAR"

The lettering should be of the height provided in Section 2.3 of General Order No. 26-D and of a color contrasting with the car body color and should be outlined by a 3/4-inch stripe.

14. The requested deviation applies to cars SCL 109015 and SCL 109016 and to their operation by SPT only.

Conclusion

The application should be granted subject to the conditions specified in the order which follows.

O R D E R

IT IS ORDERED that Southern Pacific Transportation Company, a corporation, is authorized to depart from the provisions of Section 2.5 of General Order No. 26-D by operating two excess height, center beam, bulkhead flat cars, SCL 109015 and SCL 109016, in California with full height, secure ladders subject to the condition that it shall permanently mark, stencil, or placard on the outside of each end bulkhead of each car between the center of the bulkhead and the ladder at or near 15 feet 6 inches above top of rail in an area not less than 7 inches by 10 inches with a

3/4-inch stripe outlining the area and in a color contrasting with the car body color the following:

"WARNING
RESTRICTED OVERHEAD
CLEARANCE FROM
TOP OF CAR"

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

Dated at San Francisco, California, this 26th
day of AUGUST, 1975.

President

Commissioners

APPENDIX A

