

ORIGINAL

Decision No. 85543

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of THE ATCHISON, TOPEKA
AND SANTA FE RAILWAY COMPANY for
Authority to Close Facility at
2200 Harrison Avenue, National City,
California.

Application No. 55726
(Filed June 9, 1975)

Frederick G. Pfrommer, Attorney at Law,
for The Atchison, Topeka and Santa
Fe Railway Company, applicant.

Jennings, Engstrand & Henrikson, by
Donald F. McLean, Jr., Attorney at
Law, for the City of National City;
William R. Daly, for John Hancock
Furniture Manufacturing Co.; J. L.
Dolan; for Brotherhood of Railway
Clerks; protestants.

Max Garmon, for Dixieline Lumber
Company, interested party.

Albert A. Arellano, Jr., for the
Commission staff.

O P I N I O N

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe), a Delaware corporation, seeks authorization to close its office at 2200 Harrison Avenue, National City, California.

After due notice, public hearing was held before Examiner Johnson in National City on November 4, 1975 and the matter was submitted subject to receipt of concurrent briefs due December 4, 1975. Briefs, were received from Santa Fe and protestant John Hancock Furniture Manufacturing Company (Hancock). The city of National City (City), however, did not file a brief by the due date but requested

permission to late-file its brief. Permission was given to file the brief on or before January 5, 1976 with the understanding that Santa Fe would be permitted a closing brief due on or before February 4, 1976. City mailed its brief on January 4, 1976 and the matter was finally submitted on January 22, 1976 upon receipt of Santa Fe's closing brief.

Testimony was presented on behalf of Santa Fe by its station supervisor, by its agent from the Twenty-second Street yard in San Diego, and by one of its assistant managers of traffic. Testimony was presented on behalf of National City by the manager of marketing of the Port of San Diego. Other parties to the proceeding participated through cross-examination of the various witnesses.

Present Operations

The agency at 2200 Harrison Avenue, National City, consists of an old warehouse-type building with the agent occupying a ten-foot by ten-foot office equipped with a desk, counter, and telephone. The balance of the building is presently utilized for the storage of some of Santa Fe's records.

The agent is paid on a daily basis and receives a full day's compensation irrespective of the time required to complete his assigned duties. The office is open five days a week from 7:00 a.m. to 4:00 p.m. except for one hour for lunch and periods when the agent is performing his duties outside the office. Telephone calls are not transferred during his absence and, therefore, remain unanswered. The office has no facilities with which to feed Santa Fe's computers.

The agent's present duties are: (1) to make a daily yard check, (2) to keep demurrage records, (3) to receive telephone calls when cars are ordered for outbound shipments, and (4) to sign bills of lading on outbound shipments. It is estimated that it takes from four to six hours a day to complete these assignments. Duties which previously were performed by the station agent, such as damage claim inspections, tariff applications, and service complaints, have been transferred to centralized departments in San Diego.

The yard check consists of a physical inspection of industry or team tracks to determine if the cars located there have been unloaded. The car number, initial, and location are noted on a company form which is filed in the agent's office for future reference to verify, if necessary, demurrage records. No personal contact with customers is required.

Demurrage is a penalty charge for excessive detention of a freight car by a shipper or receiver. The placement time is recorded by the local train conductor and, where applicable, given to the agent who records it on his demurrage sheets. When the car is ready to be removed, the customer telephones the agent who notes, on the demurrage record, the time the car was released. When the detention time exceeds the free time (24 hours loading, 48 hours unloading) the agent prepares a demurrage bill which he sends to the central accounting bureau for processing and collection.

The bill of lading is a standard form prescribed by the Interstate Commerce Commission as the contract of transportation and may be signed by any authorized railroad employee at any location. The record shows that in the nine months ended September 30, 1975, only 63 cars of freight originated on the Santa Fe system at National City, and that many of the bills of lading were signed by other than the National City agent.

The agent at National City may take telephone orders from customers for empty cars to be placed for loading and outbound shipment. If the required type of cars are available in National City they will be utilized, otherwise the request is referred to the San Diego yard office. All switching, car placement, train make-up, and related operations for San Diego and National City are performed by a switch engine operating out of the San Diego yard. The engine foreman may receive his instructions from the National City agent, the representative of the Twenty-second Street agent, or by radio from the Twenty-second Street yard office.

Proposed Operations

Santa Fe expects to eventually consolidate the representatives of all its special service, quality control, engineering and freight traffic departments at the Twenty-second Street yard in a building to be built. The proposed elimination of the National City agency, however, is not contingent upon the completion of this proposed building. The record shows that Santa Fe, if the pending application is granted, contemplates transferring the present position of the agent in National City to the San Diego yard office. The agent in this new position, presumably the present National City agent, will go on duty at 6:00 a.m. and work until 3:00 p.m. It is presently contemplated that he will perform the yard inspections, sign bills of lading, and keep demurrage records at this new location in the same manner that he did at National City. In addition, the record shows, he will be available for additional work, such as handling of claim inspections, to fill-in the remaining portion of his eight-hour shift.

Position of Santa Fe

Santa Fe takes the position that the filing of this application and presentation of evidence seemed to be the best and quickest way to demonstrate to the Commission that its General Order No. 36-D is not being properly applied and, moreover, is ambiguous, archaic, unduly burdensome, and discriminatory in the light of present-day railroad operations. In support of this position, Santa Fe notes in its brief that the concept of "agency service at any station" dates back to 1934, and the substance of the prohibition against removal of a "depot platform, siding, spur or other facility" dates from 1913. Santa Fe argues that during the lifetime of the General Order No. 36-Series, the duties and need for railroad local station agents have changed so substantially that "agency service" no longer has whatever meaning was once attributed to it and is now an ambiguous term.

Santa Fe takes the further position that when a protest is made in connection with a proposed agency closing pursuant to General Order No. 36-D the Commission should not automatically require the railroad to file a formal application. Santa Fe requests that formal applications should be required "only when a substantial, adverse effect on the public is shown to be likely." The mere filing of a protest should not be enough.

Santa Fe also notes that the political boundary between National City and San Diego is not significant for transportation utilities and that the two communities are regarded as one terminal area for transportation purposes. Santa Fe notes that it is, therefore, not surprising that the port facility located at 22nd and Quay in National City is described as the facility of the San Diego Unified Port District.

Position of National City

City takes the position that the public has a right to rely on the continuance of facilities upon which it has come to depend (Askew v Southern Pacific (1913) 2 Cal R.R.C. 1032) and, therefore, consideration of a reduction in agency status is of the highest significance. City notes that the freight agency first operated in the original depot building in 1881 as a part of the Southern Railroad Company.

City alleges that Santa Fe has failed to meet any of the most rudimentary legal standards relevant to this proceeding such as public convenience and necessity, the financial performance of the station, and the burden of proof to show by clear and convincing evidence that the maintenance of the agency is not required. City also notes that the application contains no reference to public convenience and necessity but only that the duties of the National City agent can be more efficiently and economically performed from Santa Fe's offices in San Diego where similar or identical duties are already performed.

According to City, the sole issue for consideration at this time is whether or not public convenience and necessity require the maintenance of the agent at National City. City quotes portions of Decision No. 81352 dated May 8, 1973 in Application No. 53568 for authority to close the agency at National City, which found that an agent is required at National City to provide service for local shippers and public convenience and necessity require that the National City station remain as an agency station.

City alleges that the stated purpose of closing the National City agency for economy and efficiency of operation is totally unsupported on the record. To the contrary, according to City, extensive cross-examination of Santa Fe's witnesses indicated that no economic evaluation of the proposed closing was made by Santa Fe's witnesses. According to City, all the evidence indicates that closing the agency would result in increased transportation costs, lost agents' time, and general deterioration of service, with no corresponding offsetting benefits. Under these circumstances, City alleges the application must be denied.

City further alleges that Decision No. 81352, just two years prior to the filing of this application, places a special burden on Santa Fe because there has been no significant change in circumstances since our denial of the same request. Santa Fe has, according to City, carefully avoided the preparation and presentation of evidence that would be relevant under the standards of Decision No. 81352.

Position of Hancock

Hancock takes the position that Santa Fe completely failed to show any operating or financial need to close the agency station at National City and that, absent information indicating a financial loss, it must be assumed that financial data would show the financial benefits of keeping the agency open.

Hancock noted that 51.7 percent of the cars destined to the San Diego area were destined to National City.

Hancock further alleges that since Santa Fe failed to provide economic justification for closing the agency, the application must be analyzed on the basis of public convenience and necessity. Hancock argues that in considering public convenience and necessity, the interest of the shipping public is primary and the carrier interest is secondary, unless, which is not the case in this matter, the retention of the existing service imposes such a financial loss on the carrier that it imposes an undue and unreasonable burden upon the carrier.

Hancock further alleges that Santa Fe has consistently reduced the duties and responsibilities of the National City agent as a means to provide justification for closing the station.

Hancock cites the excellent relationship it has experienced with the various agents at the National City station as an indication that the agency has been operated in the public interest and that such operation should be continued.

Applicability of General Order 36-D

General Order No. 36-D was adopted January 14, 1975 and became effective January 20, 1975. (Resolution No. ET - 1193). It provides in part that "...no railroad corporation shall hereafter reduce agency service at any station without having first given sixty (60) days' notice to the public,...by posting in a conspicuous place at each such station or office, notice or notices, of intention to effect such changes..." and that the Commission, upon protest or complaint, timely filed, shall have the power to require the railroad to file a formal application for authority to make such change.

The obvious intent of this general order is to provide an appropriate vehicle for public hearing on a contested reduction in agency service. It will be noted that an application is required only when a protest is received. If there is no such protest, the reduction in agency service is permitted once the posting requirement has been accomplished. The need for public airing of such contested agency reductions was obvious when the General Order No. 36-Series was first promulgated and should be equally obvious at this time. Without this, or a similar order, the railroads could arbitrarily close whatever agency they desired and the burden would be on the public, through a formal complaint, to convince the Commission that the agency must be restored. The changes in operating procedures since the inception of the General Order No. 36-Series change the requirement for public hearing on contested closures not at all.

Public Convenience and Necessity

As previously discussed, the protestants in this matter take the position that public convenience and necessity require that the National City agency not be closed as requested in this application. In Decision No. 81352 we found in part as follows:

"3. The service provided by the National City agent includes track and yard inspections, claim investigations, handling complaints, keeping demurrage records, ordering rail cars for snippers, and handling bills of lading.

"4. An agent is required at National City to provide service for local shippers."

and concluded that public convenience and necessity required the retention of an agency station at National City.

The record shows that two of the duties listed in Finding 3, i.e., claim investigations and handling complaints, are no longer part of the National City agent's prescribed duties but are performed by personnel located in San Diego. If the application is granted, it is anticipated that the present National City agent will be physically transferred to San Diego but will, in all probability, continue to perform many of the duties he presently performs out of the National City office.

With respect to service performed for the shippers it should be noted that at the present time the telephone at the National City agency is unattended when the agent is necessarily absent for performing his assigned duties. With the closing of the National City agency, the telephone will be transferred to San Diego and there will be no periods when the telephone will be unanswered during normal working hours. The effect of transferring such agency duties as the keeping of demurrage records, ordering rail cars for shippers, and handling bills of lading from National City to San Diego should be negligible with respect to the shippers. Consequently, it would appear that public convenience and necessity no longer require the retention of an agency at National City.

Findings

1. The agent at National City has only four to six hours work a day and when he is out of the office the phone is not answered.
2. The services of the National City agent will be performed at the San Diego agency with more efficiency and service to the public.
3. There have been changed circumstances since Decision No. 81352 was issued including the elimination of two duties of the National City agent, claims investigations and handling complaints.
4. Public convenience and necessity no longer require that Santa Fe should maintain an agency at National City.

The Commission concludes that the application should be granted as provided in the order which follows.

O R D E R

IT IS ORDERED that:

1. The Atchison, Topeka and Santa Fe Railway Company is authorized to close its agency at 2200 Harrison Avenue, National City.
2. Within one hundred twenty days after the effective date of this order and not less than ten days prior to the discontinuance of the agency at National City, applicant shall post a notice of such discontinuance at the station and, within one hundred twenty days after the effective date of this order and on not less than ten days' notice to the Commission and to the public, applicant shall file in duplicate amendments to its tariffs showing the change authorized and shall make reference in such notice and tariffs to this decision as authority for the change. In no event shall the agent be removed earlier than the effective date of the tariff filings.
3. Within thirty days after discontinuance of service applicant shall give written notice to the Commission that it has complied with this order.

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

Dated at San Francisco, California, this 9th day of MARCH, 1976.

William J. Quinn President
Vernon A. Sturgeon
W. W. Holmes
Robert A. ... Commissioners

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