

Decision 84 07 062

JUL 5 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

UNITED TRANSPORTATION UNION,
CALIFORNIA STATE LEGISLATIVE BOARD,
a labor organization,

Complainant,

vs

SOUTHERN PACIFIC TRANSPORTATION
COMPANY, a corporation,

Defendant.

ORIGINAL

Case 84-05-105
(Filed May 31, 1984)

CEASE AND DESIST ORDER

Complainant United Transportation Union, a labor organization which assertedly represents all operating personnel - conductors, brakemen, yardmen, firemen, and some engineers - on defendant Southern Pacific Transportation Company's railroad, alleges that defendant requires its railroad operating personnel to make walking inspections pursuant to defendant's Operating Rules 827 and 829 in an area between the location near Bakersfield, California known as Sandcut (at approximately Milepost 325) and a location near Tehachapi known as Cable (at approximately Milepost 358) on the San Joaquin Division of its railroad, despite the alleged lack of or inadequacy of physical walkways in this mountainous territory, as required by Commission General Order 118, thereby exposing these personnel to the possibility of severe personal injury or fatality from falls down long and steep mountainous grades and dropoffs, a possibility compounded in nighttime hours due to lack of visibility.

Complainant asserts that despite informal attempts in the past to obtain alleviation of these unsafe conditions, there has been

a lack of corrective action on the part of defendant, and asks that the Commission issue an immediate cease and desist order prohibiting defendant from requiring operating crews of any railroad to make walking inspections of any train between Sandcut and Cable until the matter is heard by the Commission.

Based upon the allegations and verified statements of the complainant, the Commission finds that a present danger appears to exist which merits issuance of the relief requested pending public hearing on the issue presented and the need for continued restraint at a public hearing Monday, July 23, 1984, at 10:00 a.m. in the Commission's Courtroom, State Office Building, 350 McAllister Street, San Francisco before Administrative Law Judge Weiss.

In its answer to the complaint defendant states as its fourth affirmative defense that issuance of this order is beyond the jurisdiction of this Commission, asserting that jurisdiction over rail transportation in California "is vested exclusively in the Interstate Commerce Commission pursuant to 49 U.S.C. § 10501 and the ICC's order in Ex Parte No. 388, State Intrastate Rail Rate Authority - P.L. 96-488, 365 ICC 700 (May 4, 1982), 47 Fed. Reg. 20220 (May 11, 1982)." We reject this assertion, noting that State railroad safety regulations are not preempted unless the Federal Railroad Administration has regulated the particular subject matter of the State regulation, and even then the State may adopt a stricter regulation so long as it is not incompatible with the federal regulation and is not an undue burden on interstate commerce (See Federal Railroad Safety Act of 1970, 45 U.S.C. § 434). Our General Order 118 relating to construction and maintenance of walkways adjacent to railroad trackage specifically regulates potentially dangerous conditions facing railroad workers. Violation of the General Order could result in a railroad employee's being killed or injured in a fall.

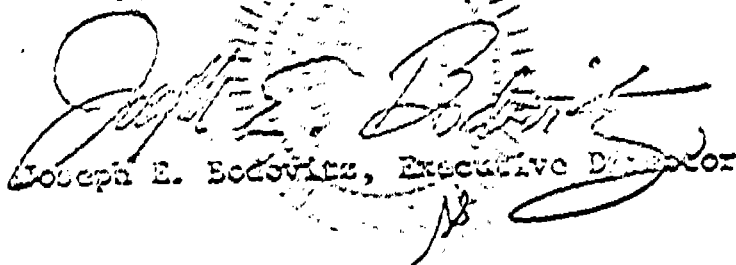
Accordingly, IT IS ORDERED that defendant Southern Pacific Transportation Company, pending hearing and a determination of need for continued restraint, of Case 84-05-105, shall cease and desist from application of those portions of defendant's Rules 827 and 829 which would require walking inspections of stopped trains in the area between the location near Bakersfield, California, known as Sandcut (at approximately Milepost 325) and the location near Tehachapi known as Cable (approximately Milepost 358) on the San Joaquin Division of its railroad.

This order is effective today.

Dated JUL 5 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
FRISCELLA C. CREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director