

Decision 84 10 088

OCT 17 1984

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
Union Pacific Railroad Company, a  
Corporation, Requesting an Exemption  
From Certain Provisions of General  
Order 26-D to Permit the use of  
Certain Wide Cars Used to Carry  
Airplane Parts.

Application 83-11-11  
(Filed November 7, 1983)

Robert M. White, Attorney at Law, for  
Union Pacific Railroad Company, applicant.  
J. L. (Jim) Evans and James P. Jones,  
for United Transportation Union,  
protestant.  
Richard J. Weigle, for Brotherhood of  
Locomotive Engineers, interested party.  
Thomas P. Hunt and Herman W. Privette,  
for the Commission staff.

O P I N I O N

By this application Union Pacific Railroad Company (UP) originally requested exemption, subject to precautions, from the Commission's General Order (GO) 26-D in connection with the movement of six UP, two Missouri Pacific (MP), and four Texas Pacific (TP) excess width rail cars. The cars were originally in service as flatcars with widths of ten feet seven inches, but have been modified to accommodate special containers (canopies) used to hold airplane parts. These modifications have extended the widths of the cars to eleven feet four inches. The application was protested by the United Transportation Union (UTU). A duly noticed public hearing was held before Administrative Law Judge (ALJ) Lemke March 7 and April 25, 1984 in Los Angeles and San Francisco, respectively and the matter was submitted.

At the Los Angeles hearing the four TP cars were deleted from UP's application because they are no longer in service. Also, three of the UP cars--259081, 259087, and 259088--were identified as idler cars, rather than excess width boxcars, and were deleted from the original request. Thus, the application, as amended, consists of a request to exempt three UP and two MP wide cars from the provisions of GO 26-D. These are identified as UP cars 259084, 259086, and 259089 and MP cars 818117 and 818122.

The principal issue in this proceeding is whether UP requires an exemption from the provisions of GO 26-D when operating within California flatcars, to which have been bolted canopies measuring eleven feet four inches in width. If the canopies constitute part of the cars, the exemption authority is required; if the canopies are part of the lading, other provisions of GO 26-D not requiring the exemption are applicable.

By Decision (D.) 89639 dated November 9, 1978 in Application (A.) 58316 we granted Southern Pacific Transportation Company (SP) an exemption from GO 26-D in the operation of two 13-foot wide cars and three 12-foot wide cars. In that proceeding canopies were welded to the floors of the flatcars. The decision did not address the issue of bolted canopies.

GO 26-D

Under Section 7 of GO 26-D, lading mounted upon open top (flat) cars, which extends laterally in excess of 5'5" from the center line of a car, may be moved subject to the following restrictions:

- a. The size or dimensions of the lading cannot be reduced. (§ 7.2.)
- b. The load, when practical, and the car shall be placarded on the four corners with the sign "This Car Excess Width". (§ 7.3.)
- c. Cars with excess width lading shall be trained at least five cars distant from both caboose and engine. (§ 7.4.)
- d. A train order shall be delivered to every train consisting of cars with wide lading informing the crew of the presence of cars with wide lading. (§ 7.5.)
- e. A separate train order shall be delivered to every train which may be affected by the presence or movement of a train with wide loads. (§ 7.6.)
- f. Yard supervisors shall be notified sufficiently in advance of the arrival of trains with wide loads to enable them to safeguard the employees in the yards. (§7.7.)

A railroad may lawfully operate cars with wide loads without advance approval of the Commission merely by observing the above special provisions of §§ 7.2-7.7 of GO 26-D. Section 16.2 of GO 26-D provides that a railroad may apply for an exemption from the provisions of GO 26-D. Wide cars (as opposed to wide loads) may be operated only after such an exemption is granted by the Commission.

UP filed its application at the request of the staff, whose investigation had determined that three of the UP cars named in the application are wider than the ten feet-ten inch maximum allowable width set forth in GO 26-D.

UP Evidence

Robert Harwood, an Associate Transportation Supervisor in the Commission's Railroad Operations Section, was called by UP as an adverse witness under the provisions of Evidence Code § 776. He inspected three UP railcars destined for McDonnell Douglas, Lakewood, at Paramount Station in July 1983 and determined they were eleven feet four inches wide because of the metal canopies which were affixed to the flatcars. Harwood testified that while he thought the containers were welded to the cars, he could not state with certainty that this was the case, it being possible that they were bolted.

John McGarry, Section Manager for Traffic and Customers for McDonnell Douglas, testified that three UP cars--259084, 259086, and 259089--are used to transport airplane parts from Canada to McDonnell Douglas' assembly plant at Lakewood in Southern California. He stated in connection with these three cars that he believed the canopies are not welded, but bolted to the flatcars; that the canopies have in fact been removed from the flatcars on occasion for repair, although they are not normally loaded and unloaded in the shipping process. DC-9 floor panels having a value of about \$508,000 are shipped in these cars. Other means of transportation have been investigated, i.e., air (too expensive) and truck (damage prone) and rejected in favor of the rail mode. The witness testified that it is necessary to have the canopy in its high and wide configuration to accommodate the shape of the airplane parts contained within and that the canopy is in its most efficient state to cover the material. He stated that of fourteen or fifteen thousand people employed at McDonnell Douglas, about eighty percent are involved in the construction of the DC-9; that about eleven hundred DC-9s have been sold thus far having an approximate value of \$25 million each; and that an order for 163 of these aircraft has recently been received which will probably take the company into 1990. He further stated that the DC-9 is used by the Navy and Air Force, designated as DC-9A and DC-9B, respectively, and used as medical evacuation aircraft.

McGarry testified that these bolted cars have been used by UP for the last seven or eight years.

McGarry also testified with respect to two MP rail cars - 818122 and 818117. These cars are used to transport the horizontal stabilizer and the elevator for the DC-10 and KC-10, the KC-10 being the military version. About twenty percent of McDonnell Douglas' employees in Lakewood work on these two airplanes. The parts move to Lakewood from Texas. The canopies on these two MP cars are welded to the flatcars. Shipments in these cars are moved as wide loads. They are also eleven feet four inches wide with the canopies.

A rate witness for UP sponsored Exhibit 10, an excerpt from the Official Railway Equipment Register, which shows that MP cars 818117 and 818122 are flatcars with shipper-owned canopies. The witness also sponsored Exhibit 11, a reproduction of Item 1595 of TransContinental Freight Bureau Tariff 300-F. The item names a rate applicable to the transportation of aircraft wings and parts from Port Huron, Michigan to Lakewood and specifies that when shipments are made in shipper's car fixtures (i.e., canopies), the weight of the fixture may be excluded from the net weight of the shipment. The rate also includes the return of the canopy to point of origin. The witness stated that without these tariff provisions other tariff rules would be applicable, requiring that the weight of the canopy be charged for on the shipment to Lakewood, and that the canopy be rated as a separate shipment on the return movement.

UP's Director of Harbor Operations sponsored Exhibit 16, a Trainmaster's Circular issued November 28, 1983 informing trainmen and enginemen that the cars which are the subject of this application, being excess width cars, would be operating on the San Pedro Branch Line, and directing that precautions be taken by train crews to avoid accidents during the operation of the cars. At the close of the hearing in Los Angeles UP had conceded that the canopies on the MP cars are welded to the flatcars, but that none of the UP cars had been closely inspected and it could not be stated definitely at that time whether they were welded or merely bolted to the flatcars. The hearing was adjourned to April 25, 1984 in San Francisco for the purpose of giving the staff and other parties opportunity to inspect the UP cars as they again appeared in California in late March.

At the adjourned hearing the UP witness testified that he had observed the three UP cars involved in the proceeding and determined that the canopies were in fact bolted, rather than welded to the flatcars. A photograph from Exhibit 19 depicts a placard on one of the UP cars bearing the heading "Excessive Dimension Load". The placard was placed on the car only three or four weeks before the April hearing.

The railroad's general superintendent of its south central district introduced documents containing rules which direct employees in the handling of wide loads. He outlined the railroad's methods and precautions taken to ensure the safe handling of these shipments. This witness stated that the UP makes no distinction between wide cars and wide loads in connection with its operations or the use of train orders, but treats both situations in the same manner with respect to safety precautions.

Lastly, a UP witness testified that he had examined Federal Administration Railroad Employee fatality statistics involving 388 accidents occurring between 1977 and 1981, and found no incident attributable to the operation of either wide loads or wide cars. This analysis concerned itself only with fatalities; the witness had no information concerning nonfatal injury accidents. Furthermore, the data excluded mainline accidents.

UTU Evidence

A witness for UTU testified that he has received numerous complaints concerning violations of general orders pertaining to wide cars. He stated that when a wide car or load is transported it reduces the work space between moving equipment and is less safe than the minimum safety requirements provided in GO 26-D. He believes that UP should be penalized for operating wide cars for several years without authorization and requested that the railroad be ordered to cease and desist from operating within California until authority has been granted.

Staff Position

The staff is generally opposed to any reduction from the minimum standards named in GO 26-D. However, since the Commission by D.89639 authorized the movement of cars with widths greater than those involved in this proceeding, staff took a neutral position concerning this request.

Staff believes it is inconsequential whether the canopies are welded or bolted to the cars; that both constitute excess width equipment, rather than wide loads. Staff further observes that there has not been adequate marking, stenciling, or placarding on the cars involved in this application as required for wide loads under GO 26-D § 7. Staff recommends that if the application is granted, the authority be limited to the transportation of the aircraft.

components identified in the application, and that when the need for the canopies ceases they be removed from the flatcars. It suggests that any order authorizing UP's request be subject to the following conditions as specified in Exhibit 12:

- "1. Such cars shall be operated subject to the provisions of Section 7 of General Order No. 26-D. The notices to train crews either by train order or message on paper of a distinctive color required by Subsection 7.5 shall include the number of the cars being transported.
- "2. Such cars and any cars containing lading in excess of ten feet ten inches wide shall be blocked together in the train.
- "3. Such cars shall not be left standing on tracks where adjacent track centers are less than fifteen feet apart.
- "4. A train containing such cars shall not meet, pass, or be passed on curves, turnouts, or locations where track centers are less than fourteen feet apart by any rail movement in excess of ten feet ten inches wide.
- "5. Such cars shall have alternating red and white reflective four-inch-wide diagonal strips from floor to top on the end portion which extends beyond five feet five inches from center line.
- "6. Movement of such cars shall be expedited and handled in through trains and main lined wherever operations will permit.
- "7. Employees shall be prohibited from riding such cars or on cars moving past such cars on adjacent tracks.
- "8. The above conditions shall apply in the event of operations of any other railroad whether trains are operated by personnel of Union Pacific or of a foreign line railroad. Union Pacific shall be responsible for complying with this requirement."

These conditions are similar to those proposed by UP. ✓



Discussion

We concur with the staff and UTU. Whether the canopies are bolted or welded to the flatcars is inconsequential. To distinguish between welded or bolted canopies when human safety is at stake would be frivolous.

However, we are persuaded that the modified cars are and can be operated safely. UP's general superintendent of its south central district testified at length concerning the precautions taken in the handling of wide cars and wide loads.

In D.89639 we relied upon several factors in granting SP an exemption from GO 26-D for similarly constructed cars, exceeding the width of the cars we are considering here. Those factors were:

- a. The military nature of the cargo;
- b. The high value of the cargo;
- c. The sensitivity of the cargo to damage;
- d. The relatively infrequent shipments;
- e. The use primarily of out-of-state railroads;
- f. The high cost and impracticability of other modes of transportation; and
- g. The special restrictions on the transportation recommended by the staff.

Virtually the same conditions are present in this proceeding. We have no evidence on this record that it is any less safe to handle wide cars on the UP than on the SP. Since the cars in this case are not as wide as those we authorized to move in D.89639, we will grant this request. Our order will authorize the movement subject to the staff's recommended conditions set forth in Exhibit 12.

The testimony concerning tariff provisions which permit the exclusion of charges for the weight of the canopies on the loaded and return movements, suggests to us a recognition on the part of the tariff publishing agency that the circumstances underlying this transportation are unique. The effect of the tariff rule is the same as if the cars were originally built in their present condition with permanent canopies.

While the UP cars have canopies bolted to the flatcars, posing a case of first impression to the Commission on the question whether they thus constitute wide cars or wide loads, such is not the case with respect to the two MP cars. The canopies of the MP cars are welded to the flatcars, as was the case in the circumstances covered by D.89639. In that decision we admonished SP that we expect it to obtain our authority prior to commencement of operations requiring exemption. The record is not clear as to how long the MP cars have been operating within California. McGarry testified that they are "...in service now." (Tr. p. 49.) He estimated that the bolted UP cars have been in service seven or eight years. (Tr. p. 44.)

UTU urges that punitive measures be imposed against UP for operating wide cars without prior authority. We do not believe the circumstances warrant punitive measures. The question whether the bolted canopies constitute a wide car is a valid one. The operation of the two MP cars is a violation, but we do not have information

concerning the length of time they have been operated within California. In any case, fines could not be properly imposed because this is an application proceeding. There is neither a complaint pending against UP nor has the railroad been named as respondent in an order instituting investigation.

However, we will admonish UP that we deem the operation of the MP cars over its line a case of, if not willful disregard of our ruling in D.89639, at least glaring negligence with respect to its responsibilities to the public and particularly to the operating crews employed on its tracks and within its yards. Any future violation of this nature will be severely dealt with.

Findings of Fact

1. Rail transportation is a practical, economic, and expeditious means of carrying McDonnell Douglas' civilian and military aircraft assemblies, when compared with air and highway transportation.
2. The use of specially designed steel boxcars is necessary to protect the valuable lading from damage.
3. The specially designed UP cars consist of steel canopies bolted to a flatcar. The MP cars consist of steel canopies welded to a flatcar.
4. All of the cars described in Finding 3 constitute wide cars, as opposed to wide loads.
5. Risks to the public and to railroad personnel can be greatly reduced and the subject cars can be operated with reasonable safety if operated under the safety provisions of General Order 26-D § 7 and subject to the additional restrictions and conditions recommended by the Commission staff as set forth in Exhibit 12.
6. The use of these specially designed cars will be relatively infrequent.

Conclusions of Law

1. The application, as amended, should be granted.
2. Upon termination of the special circumstances for which authorization is sought, the specially designed cars should not be operated until the cars are modified so as to be suitable for normal operations.

O R D E R

IT IS ORDERED that:

1. Union Pacific Railroad Company is authorized to operate cars UP 259084, UP 259086, and UP 259089, and MP cars 818117 and 818122 for the McDonnell Douglas traffic described in this decision subject to the following conditions and restrictions:

- a. Such cars shall be operated subject to the provisions of Section 7 of General Order No. 26-D. The notices to train crews either by train order or message on paper of a distinctive color required by Subsection 7.5 shall include the number of the cars being transported.
- b. Such cars and any cars containing lading in excess of ten feet ten inches wide shall be blocked together in the train.
- c. Such cars shall not be left standing on tracks where adjacent track centers are less than fifteen feet apart.
- d. A train containing such cars shall not meet, pass, or be passed on curves, turnouts, or locations where track centers are less than fourteen feet apart by any rail movement in excess of ten feet ten inches wide.
- e. Such cars shall have alternating red and white reflective four-inch-wide diagonal strips from floor to top on the end portion which extends beyond five feet five inches from center line.
- f. Movement of such cars shall be expedited and handled in through trains and main lined wherever operations will permit.
- g. Employees shall be prohibited from riding such cars or on cars moving past such cars on adjacent tracks.

h. The above conditions shall apply in the event of operations of any other railroad whether trains are operated by personnel of Union Pacific or of a foreign line railroad. Union Pacific shall be responsible for complying with this requirement.

2. Upon termination of the special circumstances found in connection with the McDonnell Douglas traffic described in this decision, the rail cars identified in Ordering Paragraph 1 shall not be operated within California until they have been modified so as to be suitable for normal operations.

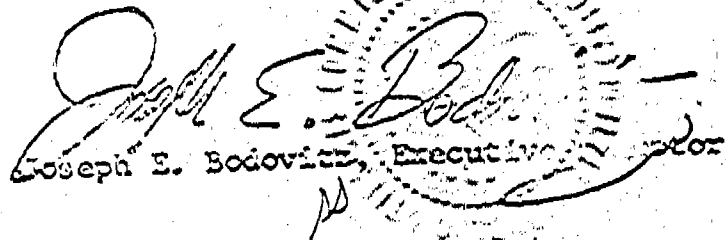
3. This application is granted, with conditions.

This order becomes effective 30 days from today.

Dated OCT 17 1984, at San Francisco, California.

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners

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

  
Joseph E. Bodovitz, Executive Director

components identified in the application, and that when the need for the canopies ceases they be removed from the flatcars. It suggests that any order authorizing UP's request be subject to the following conditions as specified in Exhibit 12:

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