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Decision 91-05-051 May 22, 1991

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)
(Petition filed
April 29, 1991)

OPINION PARTIALLY VACATING
DECISION 84-12-025

Statement of Facts

Inter alia, and as relevant here, General Order (GO) 118 sets forth specific requirements concerning the construction, reconstruction, and maintenance of walkways adjacent to railroad trackage. The purpose is to require a safe place for railroad operating personnel to perform their on-ground duties while operating trains in California.

By the captioned complaint, the United Transportation Union (Union), representing all operating personnel on Southern Pacific Transportation Company's (SP) railroad, alleged that by application of certain of the latter's Rules, railroad operating personnel were required to make nonemergency walking inspections of stopped trains in a 34-mile mountainous area of SP's San Joaquin Division between Sandcut (near Bakersfield) and Cable (near Tehachapi), despite a lack of or inadequate physical walkways in that area, thereby exposing involved personnel to possible physical injury or death from falls.

After hearings, the Commission concluded that a present danger existed, and by Decision (D.) 84-07-062 (issued July 5, 1984) and D.84-08-122 (issued August 7, 1984), ordered SP to cease and desist from applying its Rules to require nonemergency walking inspections of stopped trains in the area.

After further hearings including videotape inspection of the trackage and walkway areas, the Commission concluded that while substantial stretches of the trackage provided safe walkways, there were certain other locations which indeed provided nonstandard or virtually nonexistent walkways. By D.84-12-025 modified by D.85-02-042, the Commission vacated its earlier cease and desist orders prohibiting application of its walking inspection rules in the daytime during clear visibility in the safe walkway areas along approximately 21 miles of trackage, while retaining the cease and desist orders as to certain specified unsafe walkway areas. The Commission continued the prohibition against application of these Rules to the entire 34-mile area Sandcut to Cable during hours of darkness or during inclement weather which materially impairs visibility.

Included in the list to areas deemed unsafe which continued to be subject to the cease and desist orders is that portion of SP's line at Caliente described in D.84-12-025 as:

"M.P. 335.1

Area of East Switch and Spur Switch at Caliente."

The "spur switch" referred to is located at the west side of the track at milepost 334.6 and provides access to a siding which extends approximately 500 to 600 feet in a southerly direction and 150 feet to the north.

United Parcel Service (UPS) had been using rail intermodal trailer-on-flatcar service, moving the traffic exclusively on the Santa Fe from the Los Angeles basin to Fresno and Stockton via Barstow. But as joint line handling by SP and Santa Fe, with interchange and physical exchange of the cars, would

be less circuitous and faster than movement via Barstow, UPS asked SP and Santa Fe to enter into an agreement accordingly. Aware that such coordinated handling would be necessary to ensure compliance with the time commitments imposed by UPS as the alternative to having this highly desired traffic diverted to motor carrier, SP and Santa Fe complied.

Under the SP-Santa Fe agreement, the traffic moves north from Los Angeles on SP's LARVS train, which operates just ahead of a Santa Fe train heading north out of Barstow. The cars containing trailers for UPS are set out by the SP train for pickup by the Santa Fe train which is directly following. In order to maximize operational efficiency, the exchange must occur before the SP train reaches the point where the Santa Fe line diverges from SP's line. This traffic is currently being exchanged at Magunden which is located three miles east of Bakersfield. But the set out at Magunden occurs during the morning commute between 7 a.m. and 8 a.m. when the movement of the rail cars blocks public crossings. Also, the trailers are being vandalized while at Magunden. For these reasons it has become urgently necessary for SP and Santa Fe to locate another exchange point free of public safety and economic problems.

Approximately 15 miles to the south SP has a siding at Caliente. This is the area previously identified as M.P. 335.1 which was prohibited from full use by D.84-12-025. It is this "spur switch" at M.P. 334.6 and the siding which it accesses that is now needed to effectuate a daily exchange between SP and Santa Fe of approximately 15 to 20 trailers. Accordingly, in recent weeks SP has performed extensive walkway improvement work at and around this west switch at Caliente and along the siding in order to facilitate this exchange of UPS traffic.

By a petition filed April 29, 1991 SP asks that the D.84-12-025 prohibitions against making nonemergency walking inspections of stopped trains at Caliente (identified as M.P. 335.1

in that decision) be immediately vacated. Exhibit A to that April 29, 1991 petition, an April 29, 1991 letter from Union to SP, supports the granting of this petition. The Commission's Railroad Safety staff has viewed the location since SP's walkway improvements, and by memorandum to Administrative Law Judge John B. Weiss also supports an immediate vacation of the D.84-12-025 prohibitions pertaining to this location at Caliente.

Because of the urgent need to cease using the Magunden area with its public safety dangers and the vandalization exposure, SP asks for processing of this petition on an ex parte, emergency basis.

Discussion

The siding and switch at Caliente now provide a remotely located protected area with newly upgraded walkways to accommodate the needs of Santa Fe train crews to perform walking inspections when Santa Fe picks up the loaded UPS cars set out there by SP. Now that these walkways have been inspected by our staff and are in full compliance with the requirements of GO 118, there is no reason to retain the M.P. 335.1 Caliente location on the D.84-12-025 restricted list. As to that location the cease and desist order should be vacated.

Coordinated handling between SP and Santa Fe is necessary in this instance to ensure compliance with the time commitments imposed by UPS and to avoid having this highly desirable traffic diverted to motor carriers, bypassing SP and Santa Fe. This type of intercarrier coordination to maximize efficient rail operations and provide effective competition with other transportation modes to meet public needs is consistent with the National Rail Transportation Policy, 49 USC Section 10101(a).

The exchange area at Caliente will be a key factor in effective coordination of this traffic. Besides being far superior to Magunden as an exchange point for this very time sensitive and high-value UPS traffic, it will also serve to eliminate the present

danger to public safety in the daily blocking of public crossings during the morning commute hours at Magunden when the exchange is moved. For this reason it is desirable that this order become effective at the earliest possible time. There being no opposition to the petition there is no need for a public hearing. The petition should be granted.

Findings of Fact

1. By D.84-12-025 the Commission ordered SP, pending further order of the Commission, to cease and desist from application of rules which would require walking inspections of stopped trains in nonemergency situations at specified locations on SP's San Joaquin Division between Sandcut and Cable.

2. No subsequent Commission order has vacated any of these restrictions.

3. At UPS's insistence, and in order to retain desirable rail intermodal trailer-on-flatcar traffic shipped by UPS, SP entered an agreement with Santa Fe which agreement requires coordinated handling between the two carriers with an exchange in the Bakersfield area in order to avoid the previous longer routing exclusively by Santa Fe via Barstow.

4. To maximize operational efficiency, the exchange must occur east of Bakersfield.

5. The Magunden location, initially used, blocks public crossings during the morning commute period in east Bakersfield and invites vandalism.

6. Using the existing switch and siding at the solitary MP 335.1 location on SP's San Joaquin Division line would be far superior to use of Magunden as an exchange point, as that use would eliminate the present public safety danger and delay at Magunden's crossings, and avoid vandalism.

7. SP recently improved the MP 335.1 location walkways to conform to GO 118 standards, thereby eliminating any reason not to partially vacate the cease and desist order of D.84-12-025 as it

pertains to walking inspections being performed at the MP 335.1 location.

8. Public safety as well as the public convenience require an immediate end of the D.84-12-025 restrictions against walking inspections at MP 335.1, and the relocation of the SP-Santa Fe exchange point from Magunden to MP 335.1 for this traffic.

9. Both the Union and the Commission's Railroad Operations and Safety Division have inspected the improved MP 335.1 location walkways and support SP's petition for partial vacation of the D.84-12-025 cease and desist order as it pertains to MP 335.1.

Conclusions of Law

1. The corrective work to the walkways at Caliente MP 335.1 warrants vacating the provisions of the D.84-12-025 cease and desist order pertaining to the walkways at that location on SP's San Joaquin Division line.

2. The Petition of SP for partial vacating of the cease and desist order of D.84-12-025 dated December 9, 1984 should be approved as proposed.

3. A public hearing is not necessary.

4. Notice of this matter did not appear on the Commission's public agenda; however an emergency exists in that the present extraordinary situation with danger and inconvenience to the public created by blockage of public crossing at Magunden in east Bakersfield during the morning commute period is one wherein the relief to be obtained by immediate opening of the Caliente MP 335.1 alternative makes time of the essence. This justifies our action today under Public Utilities Code § 306(b).

5. The order which follows should be made effective immediately.

ORDER

IT IS ORDERED that the cease and desist order contained in Decision 84-12-025 issued December 5, 1984 is partially vacated as to that portion pertaining to the location on the San Joaquin Division of Southern Pacific Transportation Company identified in that order as "MP 335.1 Area of East Switch and Spur Switch at Caliente."

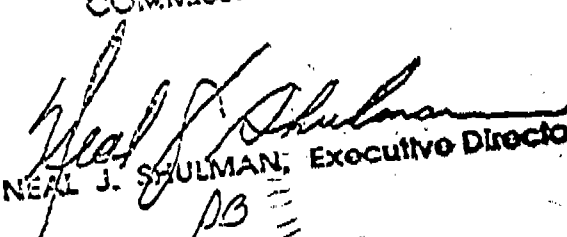
This order is effective today.

Dated May 22, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director
PB