

Decision SS 10 030 OCT 5 - 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations)
and practices of Union Pacific)
Railroad Company, Utah, a corporation.)

OII 82-10-01
(Filed October 6, 1982)

Robert M. White, Attorney at Law, for
Union Pacific Railroad Company,
respondent.

Lawrence M. Mann, Attorney at Law, for
Railway Labor Executive Association;
Paul E. Morrison, for California
State Legislative Board Brotherhood of
Locomotive Engineers; Everett G.
Hudgens, by Larry L. Larimer, for
Brotherhood of Locomotive Engineers;
J. L. Evans and James P. Jones, for
United Transportation Union California
Legislative Board; and Richard J. Weigle,
for Brotherhood of Locomotive Engineers,
Division 660, Union Pacific Railroad, Los
Angeles; interested parties.

Alberto Guerrero, Attorney at Law, Herman W.
Privette, and Clyde H. Peeples, for
the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion to
determine:

1. Whether respondent Union Pacific Railroad Company (UP)
performed and is performing freight and passenger transportation over
tracks with walkways and clearances which fail to comply with the
various safety provisions of General Order (GO) 26-D.

2. Whether UP has performed and is performing freight and
passenger transportation over tracks with walkways and clearance
which fail to comply with the various provisions of GO 118.

3. Whether UP should be ordered to cease and desist from operating any trains and/or performing any freight or passenger transportation over such tracks with walkways and clearances as the Commission may find violate any provision of GOs 26-D and/or 118.

4. Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the powers and authority of this Commission.

Public hearing was held before Administrative Law Judge Frank J. O'Leary at Los Angeles on January 25, 26, March 1, 3, and 4, 1983. The matter was submitted subject to the filing of concurrent briefs on or before June 10, 1983. Briefs were filed by UP, the Commission Staff (staff), and a single brief was filed on behalf of Railway Labor Executives Association, United Transportation Union, and the Brotherhood of Locomotive Engineers.

Background

UP's classification yard located at Yermo, California (Yermo Yard) was placed in operation on September 18, 1981. On March 25, 1981 the staff informed UP personnel that the staff believed that certain construction in the Yermo Yard did not comply with GOs 26-D and 118. Between March 25, 1981 and October 21, 1981 the staff was unsuccessful in attempts to obtain compliance with the GOs through informal processes. By letter dated October 21, 1981 addressed to D. M. Wheeler, UP superintendent, the staff stated that it had no alternative to recommending an order from the Commission directing that UP cease and desist operations in those portions of Yermo Yard not in compliance with the GOs.

On November 5, 1981, UP filed an action against the Commission in the United States District Court for the Central District of California (Civil No. 81-5698) seeking a judgment declaring that GO's 26-D and 118 are preempted by the Federal Railroad Safety Act (45 U.S.C. § 421 et. seq.) (Act) and Federal Railroad Administration (FRA) regulations passed under that Act. On

September 14, 1982, after UP and the Commission had filed motions for summary judgment, the court granted the Commission's motion and ruled that GO's 26-D and 118 are not preempted by federal law and are not an undue burden on interstate commerce. The order instituting investigation (OII) was issued on October 26, 1982.

Subsequent to the issuance of the OII, UP filed an appeal with the Ninth Circuit Court of Appeals. On June 27, 1983, the Ninth Circuit Court of Appeals issued its decision which was noted "Not for Publication" and it stated:

"A claim does not arise under federal law where it relies on federal law only to establish a defense which would preclude the declaratory judgment defendant from successfully litigating against the declaratory judgment plaintiff a claim arising under state law. Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 673-74, 70 S.Ct. 876, 94 L.Ed. 1194 (1950); Miller-Wohl Co. v. Commissioner of Labor and Industry, etc., 685 F.2d 1088 (9th Cir. 1982); United Airlines, Inc. v. Division of Industrial Safety, 633 F.2d 814 (9th Cir. 1980), cert. denied, 454 U.S. 944 (1981)."

"Declaratory judgment defendant" refers to the Public Utilities Commission and "declaratory judgment plaintiff" refers to UP in the quotation.

GO 26-D and GO 118 contain provisions for applications for exemption and/or deviation from these GO's. These provisions are more fully discussed later. UP chose not to file such applications but rather opted to challenge the jurisdiction of this Commission with respect to both GO's. The facts of this case may appear insignificant to some, but the real issue we address is whether UP will comply with our decisions, orders, and GO's. As discussed below we find that it is subject to our jurisdiction in this regard.

Staff Evidence

GO 26-D

On September 1, 1981 three members of the staff took actual measurements with a tape measure placed on the inside gauge of rail track and reading the measurement to the inside gauge of rail of the adjacent track. The staff measurements were taken at a point approximately 50 feet west of switch No. 20. Measurements of less than 14 feet, which is required by GO 26-D (Section 5.1), were found as set forth in Table 1.

TABLE 1

Between Classification Tracks Numbered	Feet	Inches
4 and 5	13	11-1/2
7 and 8	13	10-1/4
10 and 11	13	11-3/4
13 and 14	13	11
18 and 19	13	11

On October 18, 1981, the staff conducted another inspection of the yard with personnel of UP. As a result of that inspection the letter of October 21, 1981 was sent. The letter states in part that: "Actual measurements, taken (on parallel tracks) just east of switch stand C-20 located at the west end of the new yard, measured as little as 13-feet, 9-inches." The staff was unable to identify just where the 13-foot 9-inches measurement was taken.

On October 27, 1982 four members of the staff again took measurements using the same method as was used on September 1, 1981. Four employees of UP also took measurements; however, UP's method differed from the staff method in that they first found the mid-point of the distance between the inside edges of the base of rails of one track and measured to the complementary mid-point between rail bases of the adjacent track. Distances of less than 14 feet were found as set forth in Table 2.

TABLE 2

Between Classification Tracks numbered	Measurement No. 1		Measurement No. 2	
	Staff	UP	Staff	UP
5 - 6			13'-10-1/2"	13'-10-5/8"
7 - 8	13'-11-5/8"	13'-11-5/8"	13'-11-3/8"	13'-11-1/2"
9 - 10	13'-11-3/4"	13'-11-1/2"	13'-11-5/8"	*
13 - 14	13'-11-1/4"	13'-11-7/16"		
15 - 16	13'-11-3/4"	13'-11-1/2"	13'-11-1/8"	*
18 - 19	13'-11-3/4"	13'-11-7/8"		
19 - 20			13'-11-3/4"	13'-11-3/4"

* Measurements not taken due to interference of rail cars.

Measurements 1 and 2 were taken by the staff beginning at a point approximately 250 feet and 1,000 feet respectively east of the switch located at the west end of classification track 20 thence proceeding perpendicularly across the yard to classification track 1 except that measurement 1 between tracks 15 and 16 taken by the staff was taken at a point 150 feet east rather than 250 east. Measurements 1 and 2 were taken by UP personnel at a point within 50 feet of the measurements taken by the staff.

Mr. Harwood of the staff testified that in planning a yard such as the Yermo Yard shifting of track must be considered. He suggested that if tracks can shift as much as three-inches, then perhaps construction should be planned at 14-foot 3-inch centers so that the 14-foot minimum can be maintained in the event of a three-inch shift.

GO 118

Inspection of the yard, on October 27, 1981, also disclosed that walkways, other than Standard No. 6 have been provided and placed in service at the 11 locations which are high-lighted with yellow marking on Exhibit 2 as follows:

1. North side of receiving and departure track 1.
2. Between receiving and departure tracks 2 and 3.
3. Between receiving and departure tracks 3 and 4.
4. Between receiving and departure track 4 and classification track 1.
6. Between classification tracks 3 and 4.
7. Southside of classification track 20.
8. Both sides of the west leg on the "Y".
9. Both sides of receiving and departure lead at west end.
10. Switching lead at west end, and
11. Lead track at east end.

The staff contends that UP's failure to provide and place in service Standard No. 6 walkways in the above numerated locations is in violation of GO 118.

UP Defense

UP contends that with respect to the alleged violations of GO 26-D, it has complied with the order. With respect to the alleged violations of GO 118 it contends that the staff's interpretation of GO 118 is erroneous and that there is no violation. UP further contends that GOs 26-D and 118 are preempted by federal law.

GO 26-D

UP points out that the measurements set forth in Table 1 were taken prior to the Yermo Yard being placed in operation and thus cannot be violations of the GO. With respect to part 6 of Exhibit 1 UP contends that there is no specific violation as the measurement cannot be pinpointed to a specific location within the Yermo Yard. The staff agreed with this contention that there is no specific violation alleged with respect to Part 6 of Exhibit 1.

UP does not dispute the measurements shown in Table 2 (Parts 7 to 16 of Exhibit 1). However, it contends that an improper method was used by both the staff and its own personnel in the taking of the measurements.

Roland Haacke, a district engineer employed by the UP testified that:

"Normally, if we're out there to measure track centers, what you would probably do is, first of all, sight down the rail and sight down the track to insure that you are in a place which is reasonably straight, there are no hooks in the alignment, that there is nothing out of gauge, and then measure between the inside face of the base of the rail, and take half of that, assume that is reasonably close to being the center of the track.

"And then you would do the same thing on the adjacent track, measure, find the center halfway between the base of the two rails,

and it would no doubt, it's going to vary somewhat, but take half of that, and then measure between these two points perpendicular to the track on the two tracks.

"And then that would give you the distance between the center lines of the track."
(Tr. 202-203.)

Mr. Haacke's testimony discloses that center line of track can mean either the designated centerline or actual centerline. A generally accepted definition of designated centerline of track according to Mr. Haacke is that line established on the ground in the location to which the track is intended to conform in a symmetrical manner. Actual centerline is the midpoint between track at any given time. Because of track shifting the designated centerline of track and the actual centerline of track may differ.

Mr. Haacke also testified that because the 14-foot measurement set forth in Section 5 of GO 26-D is quoted in feet only rather than feet and inches (such as 14-feet 0-inches) engineers interpret measurements quoted in feet only to have a greater tolerance allowance. His exact testimony in this regard is as follows:

"Mr. White: Q Mr. Haacke, recognizing the problems that you or anyone else would have going back to the Yermo yard with a tape measure and trying to find the center line of track, will you describe to the Commission some reasonable approaches to that problem and discuss those approaches in terms of the engineering concept of precision and tolerances?

"A Well, to determine center line of track, first would be, as you said, the degree of precision which is wanted, whether you want an approximation or whether you're looking for something exact.

"Both in engineering education and in engineering practice, the matter of precision plays an extreme part, and I'm talking about precision as opposed to accuracy.

"Precision is the degree to which you are working, whether you're working in miles, feet, millimeters or microns.

"We can all understand, if two cities or two towns are 14 miles apart, we wouldn't expect those two towns to be 73,920 feet apart, although that is the multiple, we assume a reasonable tolerance.

"Order 26-A says that, and I'd like to just quote that, please, Section 5.1:

"The minimum distance between the center lines of parallel standard gage tracks shall be fourteen (14) feet except as hereinafter provided."

"It says 14 feet, it does not say 168 inches, it does not say 14 feet and zero inches, it does not say 14.00 feet.

"And by the way of differentiation, even the standards of the PUC, while their track centers are described in 14 feet or in some cases 13 feet, and in other cases 22 feet, but where they talk about side clearances, platforms, eight feet zero inches, switchboxes, three feet zero inches, signal and switch stands, six feet zero inches, through bridge supports, tunnels, water columns and oil columns eight feet zero inches.

"So obviously a greater degree of precision is anticipated.

"Where you are applying that and when you are talking about feet to an engineer, when you talk about feet, you mean a tolerance within a foot.

"If you are talking about closer tolerances, you will specify it within fractions of an inch.

"I would like to quote here from a book Basic Mathematics For Engineers and it's by Andrus, Miser, and Reingold.

"On page 24:

"A digit is significant if the maximum error in the number in which it's contained is less than or at most equal to one-half of a unit in the place which the digit occupies."

"Now, stated in another way, if you are talking about feet, you are expecting something to be accurate within half a foot.

"If you are talking about inches, an engineer expects things to be accurate within half an inch.

"On a bridge, for example, your excavation for the bridge abutment, digging the hole is to a different tolerance than the tolerance for setting the anchor bolts in cast concrete.

"They might both be nominally one hundred feet, but for your anchor bolts, you just don't say they are just 100 feet.

"They'll say 100 feet and zero inches.

"Or if you're drilling the holes in the same bridge, drilling the hole for the steels, it will specify maybe a tolerance." (Tr. 197-200.)

Mr. Haacke finds fault with the staff method of measurement in that it contains an inherent assumption that the gauges of the adjacent tracks are the same and that the rail is symmetrical. Because of those assumptions, and the permissible and real variations in gauge, UP contends that the staff would have had different dimensions if it did nothing more than measure from the other two rails in the other direction at the same locations. UP asserts that the staff method of measurement is an attempt to determine an approximate dimension between the centerline of adjacent track by measurement of another dimension that is somewhat but not perfectly

related. UP also contends that the measurements taken by the UP personnel, who accompanied the staff on October 27, 1982, were an approximation of the dimension between particular points on the centerline of adjacent track. Neither method reenacted the process used when the centerlines were precisely laid out with surveyors' instruments and stakes and the tracks were built to the lines so staked.

With respect to Mr. Harwood's suggestion that tracks be designed with 14-foot 3-inch space between track centers, UP contends that Mr. Harwood's idea would change the design of the centerline to a greater dimension and would increase the possibility of catchup collisions.

GO 118

Concerning the alleged violations of GO 118, UP contends that Standard No. 6 walkways are required only in those areas of the yard where switching is performed and does not by its own terms apply to walkways in areas where little if any switching is performed, whether the walkway is in a yard or not. UP argues that the language of the Standard No. 6 so provides. The language is as follows:

"Walkways in yards and points where industrial switching is performed, but not less than 50 ft. in advance of switch."

UP contends that the language must be read completely for a complete understanding of its meaning. UP further contends that in those areas where standard No. 6 walkways have not been installed switching is not performed. In those areas walkways that equal or exceed GO 118 Standard No. 1 have been installed and are adequate for the purpose. UP further contends that GO 118 requires they be "reasonably safe" and the walkways therefore comply with the GO.

In those areas where Standard No. 1 walkways are provided the function is to conduct train brake inspections and thus walkways that provide inspectors a clearer vision of brakes, wheels, pistons and parts under the train. Their work is enhanced by the presence of roadways that give them good footing and allow the men and materials to be transported freely to and from arriving and departing trains.

Preemption

The UP urges in this proceeding and has urged before in other proceedings that the FRA has adopted regulations covering the workplace "roadbed and all areas adjacent to roadbed". By exercising its authority over a workplace on a territorial basis, the FRA has preempted any statewide, state order concerning the same workplace. Any state regulation now may deal only with local hazards and must otherwise qualify under § 434 of the Act by not interfering with interstate commerce and by being compatible with federal regulations.

The UP urges that GO 118 and the portions of GO 26-D that are in dispute in this proceeding - namely dimensions based on measurements from the centerline of track - have been preempted by the FRA. In addition, it is argued that the PUC staff's interpretation of GO 26-D implicit in its method of measuring requires absolutely perfect gauge and alignment in conflict with FRA regulation pertaining to track gauge and alignment and must give way in this conflict to the FRA regulations. The last conflict could be avoided in this case if the provisions of GO 26-D were construed to provide a design standard with reasonable tolerances for construction based on prescribed dimensions that are as great as the variations permitted by the FRA.

Discussion

We reemphasize here what we stated previously:

"The Commission has the responsibility to
'require every public utility to construct,
maintain, and operate its line, plant,
system, equipment, apparatus, tracks, and
premises in such manner as to promote and

safeguard the health and safety of its employees, passengers, customers, and the public, ...' (Public Utilities Code § 768, see also §§ 761, 762.) GOs 26-D and 118 were adopted to protect the health and safety of railroad employees.

"GO 26-D provides the minimum clearance for a man's body on the widest authorized railroad car and a building or other obstruction. A violation of GO 26-D could result in a railroad employee's being killed or injured by being knocked off the car or wedged against or impaled by the obstruction. GO 118 provides for construction and maintenance of tracks and adjacent walkways to ensure the operating conditions required by GO 26-D." (Decision 93105, May 19, 1981, OII 18 at pp. 13 and 14.)

GO 26-D

GO 26-D sets forth the minimum clearance requirements to be observed in all construction or reconstruction of tracks subsequent to February 1, 1948. It also provides that no operations shall be conducted over such tracks where the clearances are less than prescribed there. Section 5 of the GO provides that:

"The minimum distance between the center lines of parallel standard gauge tracks shall be fourteen (14) feet except as hereinafter provided.

"The center line of any standard gauge track, except a main track or a passing track, parallel and adjacent to a main track or a passing track, shall be at least fifteen (15) feet from the center line of such main track or passing track; provided, however, that where a passing track is adjacent to and at least fifteen (15) feet distant from the main track, any other track may be constructed adjacent to such passing track with clearance prescribed in subsection 5.1 of this order.

"The center line of any standard gauge ladder track, constructed parallel to any other adjacent track, shall have a clearance of not less than twenty (20) feet from the center line of such other track.

"The minimum distance between the center lines of parallel team, house and industry tracks shall be thirteen (13) feet.

"Main, siding and yard tracks constructed prior to the effective date of this order with distance of not less than thirteen (13) feet between track centers may be extended without increasing such distance."

With respect to the measurements set forth in Table 1 that were taken prior to the Yermo Yard being opened, we concur with UP that there can be no violation of the General Order prior to the tracks being placed in service.

With respect to the measurements set forth in Table 2 (Exhibit 1, Parts 7 to 16 inclusive), the methods of measurement used by the staff and UP personnel, while not proper for measuring the "designated center line of track" as described by Mr. Haacke, are proper for measuring the actual center line of track. The question arises, "Which center line does GO 26-D refer to? To answer this question, we must look to the first two paragraphs of the GO which state:

"It Is Hereby Ordered by the Public Utilities Commission of the State of California that the minimum clearance requirements for railroads and street railroads hereinafter prescribed shall hereafter be observed in this state in all construction or reconstruction of tracks or structures adjacent to tracks.

"It Is Hereby Further Ordered that no railroad or street railroad corporation shall operate any cars, trains, motors, engines, or other rolling equipment over its own or other tracks, except as hereinafter provided, on which overhead or side clearances, or clearances between tracks, are less than the minimum herein prescribed, if such tracks or structures adjacent to such tracks are constructed or reconstructed subsequent to the effective date hereof."

It is apparent that the first paragraph pertains to construction and reconstruction and therefore Section 5 refers to designated centerline. However, the second paragraph provide that no operations shall be conducted when clearances are less than the minimum prescribed. Obviously, this refers to the actual centerline. The method of measurement by both the staff and UP personnel who accompanied the staff on October 27, 1982 were proper to determine distances between actual centerline of track.

Mr. Haacke's contention concerning a tolerance allowance because the distance is set forth in feet only and not feet and inches, is without merit. GO 26-D deals with minimum clearances. If the Commission meant the minimum to be less than 14 feet (for example 13-feet 6-inches, as maintained by Mr. Haacke) it would have made the minimum 13-feet 6-inches rather than 14 feet.

With respect to UP's criticism that the staff measurements assume that the gauges of adjacent tracks are the same and that the rails are symmetrical we believe that that is the only assumption that can properly be made. If the gauges of adjacent track were not the same and the rails not symmetrical, it is the responsibility of UP in this instance to come forward with affirmative evidence in this regard rather than merely speculating that the gauge was not the same and the tracks were not symmetrical.

We do not take Mr. Harwood's suggestion as changing the design to a greater dimension. We believe that Mr. Harwood suggested that track centers be spaced further apart during construction so that if shifting should occur the minimum clearance of 14 feet could be maintained.

Section 16 of GO 26-D deals with exemptions 16.2 provides that:

"If in any particular case, exemption from any of the requirements herein is deemed necessary by the carrier concerned, the Commission will consider the application of

such carrier for such exemption when accompanied by a full statement of the conditions existing and the reason why such exemption is asked. Any exemption so granted will be limited to the particular case covered by the application."

No such application has been filed by UP with respect to the Yermo Yard.

GO 118

GO 118 requires each railroad corporation operating within California to file its standards for the construction, reconstruction and for the subsequent maintenance of walkways adjacent to its tracks. The order also provides that each railroad shall observe these standards.

UP's standards as required to be filed by GO 118 are set forth in Exhibit 6. Standard No. 6 applies to "Walkways in yards and points where industrial switching is performed but not less than 50 ft. in advance of switch".

We do not concur with UP's interpretation that Standard No. 6 walkways are required only in those areas of the yard where switching is performed. The language describing Standard No. 6 is very clear that Standard No. 6 walkways are required in two instances, namely, (1) in yards and (2) at points (other than yards) where industrial switching is performed. This interpretation is reinforced by the fact that walkways in yards are not mentioned in Standards Nos. 1 through 5. ✓

UP's contention that Standard No. 1 walkways are safer than Standard No. 6 is not an issue to be decided in this proceeding. The proper procedure to be followed is for UP to file for a deviation from its filed standards as provided for in ordering paragraph 7 of GO 118 which states:

"7. Deviations from the filed standards or the provisions of this order may be authorized by the Commission for any specific installation for good cause upon application by a railroad corporation; which application shall include a full statement of the conditions which prevail at the time and place involved, and reasons why deviation is deemed necessary."

Preemption

In the railroad safety area, Congress established the standard for preemption in the Act § 45 USC § 434, which provides:

"The Congress declares that laws, rules, regulations, orders and standards, relating to railroad safety shall be nationally uniform to the extent practicable. A state may adopt or continue in force any law, rule, regulation, order or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, order or standard covering the subject matter of such state requirement. A state may adopt or continue in force an additional or more stringent law, rule, regulation, order or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce."

While Congress has explicitly stated the basis for preemption of state railroad safety legislation, it has also explicitly stated that there is no preemption unless and until the Secretary of Transportation, acting through the FRA, adopts a regulation covering the subject matter of the state requirement. Even then, a state may adopt a stricter regulation to reduce an essentially local hazard as long as the regulation is not incompatible with the FRA's regulation and is not an undue burden on interstate commerce.

The simple fact of the matter is that no regulations covering the subject matter of GO 26-D and GO 118 have been adopted. Mr. Haacke who served on a committee regarding federal regulations testified as follows:

"Q Do you have knowledge of what specific federal standards -- now, you were on the committee, which, incidentally, I was on also; is that correct?

"A That's correct, we both served on that committee.

"Q Now, was there any specific regulation proposed or adopted concerning clearances in the federal regulations?

"A No regulations were adopted, and I don't recall that any were proposed.

"Q Okay. At the latest meeting.

"A At the latest, correct.

"Q Were any proposed concerning walkways, or adopted?

"A No federal regulations were adopted with respect to walkways, and I don't recall that they were proposed." (Tr. 266-267.)

Findings of Fact

1. UP is a railroad corporation as defined in Section 230 of the Public Utilities Code and is subject to the jurisdiction of this Commission.

2. UP's Yermo Yard was placed in operation on September 18, 1981.

3. GO 26-D was originally adopted on January 1, 1913. It was adopted in its present form on January 19, 1948 and became effective on February 1, 1948. The portions of GO 26-D pertinent to this proceeding are as follows:

"It Is Hereby Ordered by the Public Utilities Commission of the State of California that the minimum clearance requirements for railroads and street railroads hereinafter prescribed shall hereafter be observed in this state in all construction or reconstruction of tracks or structures adjacent to tracks.

"It is Hereby Further Ordered that no railroad or street railroad corporation shall operate any cars, trains, motors, engines, or other rolling equipment over its own or other tracks, except as hereinafter provided, on which overhead or side clearances, or clearances between tracks, are less than the minimum herein prescribed, if such tracks or structures adjacent to such tracks are constructed or reconstructed subsequent to the effective date hereof."

"Section 5-Clearance Between Parallel Tracks

"5.1 The minimum distance between the center lines of parallel standard gauge tracks shall be fourteen (14) feet except as hereinafter provided."

(None of the exceptions set forth in Section 5 apply to this proceeding.)

4. GO 118 was adopted on April 9, 1963 and became effective on April 23, 1963.

5. On October 27, 1981 four members of the staff accompanied by four employees of the UP inspected the Yermo Yard.

6. On October 27, 1981 the staff found measurements between the center lines of parallel standard gauge track to be less than 14 feet between parallel classification tracks in the Yermo Yard as follows:

a	between tracks	5 and 6
b	" "	7 and 8
c	" "	9 and 10
d	" "	13 and 14
e	" "	15 and 16
f	" "	18 and 19
g	" "	19 and 20

7. On October 27, 1981 UP personnel found measurements between center lines of parallel standard gauge track to be less than 14 feet between parallel classification tracks in the Yermo Yard between the same tracks set forth in Finding 6.

8. The methods used by the staff and UP to measure the distance between center lines of tracks were proper.

9. The minimum distance set forth in Section 5 of GO 26-D is 14 feet and means exactly what it says.

10. The staff assumption that gauges of adjacent tracks are the same and that the rail is symmetrical is a rebuttable presumption which was not contradicted by evidence.

11. UP has not applied for an exemption from GO 26-D with respect to the Yermo Yard.

12. Walkways other than Standard No. 6 have been provided and placed in service in the Yermo Yard as follows:

- a. North side of receiving and departure track 1,
- b. Between receiving and departure tracks 2 and 3,
- c. Between receiving and departure tracks 3 and 4,
- d. Between receiving and departure track 4 and classification track 1,
- e. Between classification tracks 2 and 3,
- f. Between classification tracks 3 and 4,
- g. Southside of classification track 20,
- h. Both sides of the west leg on the "Y",
- i. Both sides of receiving and departure lead at west end,
- j. Switching lead at west end and,
- k. Lead tracks at east end.

13. UP's standards which were filed in compliance with GO 118 provide the following for Standard No. 6:

"Walkways in yards and points where industrial switching is performed, but not less than 50 ft. in advance of switch."

14. Walkways in yards are not mentioned in any other standard in GO 118.

15. UP's interpretation that Standard No. 6 is required in yards only where switching operations are performed is erroneous.

16. UP's standards which are identical to the standards set forth as GO 118 require that all walkways in yards be Standard No. 6.

17. UP has not applied for a deviation of its filed standards, as provided for in ordering paragraph 7 of GO 118.

18. FRA has not adopted regulations covering the subject matter of GO 26-D, Section 5.

19. FRA has not adopted regulations covering the subject matter of GO 118.

Conclusions of Law

1. UP is subject to GO 26-D and GO 118.

2. The trackage set forth in Finding 6 does not meet the requirements of GO 26-D.

3. The walkways set forth in Finding 12 do not meet the standards UP filed in compliance with GO 118.

4. UP should be ordered to cease and desist railroad operations in the Yermo Yard over the tracks set forth in Findings 6 and 12 until such time as it complies with GO 26-D and GO 118.

5. Since this is a matter of public safety, the order which follows would normally be effective on the date of signature; however, we are here providing for an effective date of 15 days after the date hereof in order that UP be given opportunity to correct the deficiencies at Yermo Yard so that compliance with the GO's is attained.

O R D E R

IT IS ORDERED that:

1. Union Pacific Railroad Company (UP) shall cease and desist from conducting operations over the tracks set forth in Finding 6 until such time as the minimum clearances between those tracks comply with General Order 26-D.

2. UP shall cease and desist from conducting operations over the tracks set forth in Finding 12 until such time as Standard No. 6 walkways are installed as required by its own standards and by General Order 118.

This order becomes effective 15 days from today.

Dated OCT 5 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO

PRISCILLA C. GREW

DONALD VIAL

WILLIAM T. BACLEY

Commissioners

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

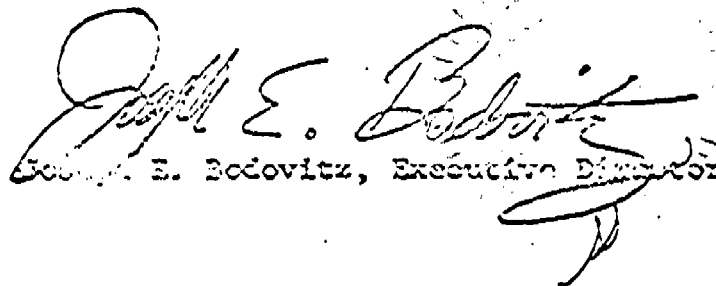

Joseph E. Bodovitz, Executive Director

TABLE 1

Between Classification Tracks Numbered	Feet	Inches
4 and 5	13	11-1/2
7 and 8	13	10-1/4
10 and 11	13	11-3/4
13 and 14	13	11
18 and 19	13	11

On October 18, 1981, the staff conducted another inspection of the yard with personnel of UP. As a result of that inspection the letter of October 21, 1981 was sent. The letter states in part that: "Actual measurements, taken (on parallel tracks) just east of switch stand C-20 located at the west end of the new yard, measured as little as 13-feet, 9-inches." The staff was unable to identify just where the 13-foot 9-inches measurement was taken.

On October 27, 1982 four members of the staff again took measurements using the same method as was used on September 1, 1981. Four employees of UP also took measurements; however, UP's method differed from the staff method in that they first found the mid-point of the distance between the inside edges of the base of rails of one track and measured to the complementary mid-point between rail bases of the adjacent track. Distances of less than 14 feet were found as set forth in Table 2.

TABLE 2

Between Classification Tracks numbered	Measurement No. 1		Measurement No. 2	
	Staff	UP	Staff	UP
5 - 6			13'-10-1/2"	13'-10-5/8"
7 - 8	13'-11-5/8"	13'-11-5/8"	13'-11-3/8"	13'-11-1/2"
9 - 10	13'-11-3/4"	13'-11-1/2"	13'-11-5/8"	*
13 - 14	13'-11-1/4"	13'-11-7/16"		
15 - 16	13'-11-3/4"	13'-11-1/2"	13'-11-1/8"	*
18 - 19	13'-11-3/4"	13'-11-7/8"		
19 - 20			13'-11-3/4"	13'-11-3/4"

* Measurements not taken due to interference of rail cars.

such carrier for such exemption when accompanied by a full statement of the conditions existing and the reason why such exemption is asked. Any exemption so granted will be limited to the particular case covered by the application."

No such application has been filed by UP with respect to the Yermo Yard.

GO 118

GO 118 requires each railroad corporation operating within California to file its standards for the construction, reconstruction and for the subsequent maintenance of walkways adjacent to its tracks. The order also provides that each railroad shall observe these standards.

UP's standards as required to be filed by GO 118 are set forth in Exhibit 6. Standard No. 6 applies to "Walkways in yards and points where industrial switching is performed but not less than 50 ft. in advance of switch".

We do not concur with UP's interpretation that Standard No. 6 walkways are required only in those areas of the yard where switching is performed. The language describing Standard No. 6 is very clear that Standard No. 6 walkways are required in two instances, namely, (1) in yards and (2) at points (other than yards) where industrial switching is performed. This interpretation is reinforced by the fact that walkways in yards are not mentioned in Standards Nos. 1 through 5. RW

UP's contention that Standard No. 1 walkways are safer than Standard No. 6 is not an issue to be decided in this proceeding. The proper procedure to be followed is for UP to file for a deviation from its filed standards as provided for in ordering paragraph 7 of GO 118 which states:

- "7. Deviations from the filed standards or the provisions of this order may be authorized by the Commission for any specific installation for good cause upon application by a railroad corporation; which application shall include a full statement of the conditions which prevail at the time and place involved, and reasons why deviation is deemed necessary."

"Q Do you have knowledge of what specific federal standards -- now, you were on the committee, which, incidentally, I was on also; is that correct?

"A That's correct, we both served on that committee.

"Q Now, was there any specific regulation proposed or adopted concerning clearances in the federal regulations?

"A No regulations were adopted, and I don't recall that any were proposed.

"Q Okay. At the latest meeting.

"A At the latest, correct.

"Q Were any proposed concerning walkways, or adopted?

"A No federal regulations were adopted with respect to walkways, and I don't recall that they were proposed." (Tr. 266-267.)

Findings of Fact

1. UP is a railroad corporation as defined in Section 230 of the Public Utilities Code and is subject to the jurisdiction of this Commission.

2. UP's Yermo Yard was placed in operation on September 18, 1981.

3. GO 26-D was originally adopted on January 1, 1913. It was adopted in its present form on January 19, 1948 and became effective on February 1, 1948. The portions of GO 26-D pertinent to this proceeding are as follows:

"It Is Hereby Ordered by the Public Utilities Commission of the State of California that the minimum clearance requirements for railroads and street railroads hereinafter prescribed shall hereafter be observed in this state in all construction or reconstruction of tracks or structures adjacent to tracks.