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Decision No. ~~88803~~ DEC 19 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application )  
of UNION PACIFIC RAILROAD COMPANY, a )  
Corporation, and MCDONNELL DOUGLAS )  
CORPORATION, a Corporation, Requesting )  
an Exemption from Certain Provisions )  
of General Order 26-D. )

Application No. 57361  
(Filed May 31, 1977)

Robert M. White, Attorney at Law, for Union Pacific  
Railroad Company, applicant.  
James P. Jones, for California State Legislative  
Board, United Transportation Union, protestant.  
William C. Bricca, Attorney at Law, and Francis M.  
Blackwill, for the Commission staff.

O P I N I O NProceeding

Hearing on this request of the Union Pacific Railroad Company (UP) and McDonnell Douglas Corporation (Douglas) for a permanent exemption from the minimum clearance provisions of Sections 3.19 and 3.20 of General Order No. 26-D for some specially designed railroad cars was held in Long Beach on January 25 and 26, 1978, before C. T. Coffey. The matter was submitted on May 11, 1978, upon notice from UP that it would not file a brief in this matter.

UP and Douglas are each owners of a series of special cars designed for the transport of wings used in the construction of large aircraft such as the DC-10. The cars were built by Maxson Corporation of St. Paul and have been used since 1969 to ship wings from Ontario, Canada, to Lakewood, California.

The possibility of the excess width of the cars was first brought to the attention of the Commission staff on March 4, 1977, when the UP's chief clerk of the superintendent in Los Angeles telephoned and advised that Southern Pacific had refused to move two of the cars because of excess width.

On March 4, 1977, a transportation operation supervisor employed by this Commission measured the four UP cars and the six Douglas cars. All of the cars measured 11 feet 1 inch or more wide to the exterior of the side ladder. Some of the cars measured 11 feet 2½ inches wide.

Sections 3.19 and 3.20 of General Order No. 26-D provides:

"3.19 Minimum side clearances authorized in this section are applicable to tracks on which freight cars having a width not greater than ten (10) feet ten (10) inches are transported. Freight cars of a width exceeding ten (10) feet ten (10) inches but not greater than eleven (11) feet one (1) inch may be transported for a period of not more than one (1) year after the effective date of this order, provided they shall be permanently marked, stenciled, or placarded, and such markings maintained in a legible condition reading

'This Car  
Excess Width.'

"All such required markings and placarding shall be placed on the side adjacent to the ladder or handholds near the floor line of the car at each of the four corners.

"3.20 Except as provided in subsection 3.19 of this order, if freight cars of a width greater than ten (10) feet ten (10) inches are transported or proposed to be transported, minimum side clearances shall be increased by an amount equal to one-half such additional width, and the distance between parallel tracks as provided in subsection 5.4 of this order shall be increased by the amount of such additional width."

The effective date of General Order No. 26-D is February 1, 1948.

Pending modification of the cars and/or conclusion of this proceeding, movement of the cars has been temporarily permitted verbally by our staff and confirming resolutions.

This application in effect requests the Commission to permit a continued operation of eight railroad freight cars owned by UP and six railroad freight cars owned by Douglas which exceed the maximum permissible width by 3 to 5½ inches. The request was opposed by the United Transportation Union (Union) and the Commission staff since General Order No. 26-D establishes minimum side clearances from the track centerline to structures or obstructions at the side of the track consistent with safety; and since the wide cars are unsafe, Union also suggested that consideration be given to an assessment of a penalty for operation of these cars within the State of California in violation of General Order No. 26-D from 1969 until 1977 and consideration also be given to a penalty for violation of Commission resolutions permitting temporary deviations from the general order.

The issues to be considered here are:

1. Should UP be permitted to operate special aircraft wing freight cars of such width that clearances between the cars and trackside structures and obstructions are less than those specified in General Order No. 26-D.
2. Should UP, alternately, be required to modify the special aircraft wing freight cars to comply with General Order No. 26-D.
3. Should UP be fined for violations of General Order No. 26-D and Commission resolutions.

In this proceeding we shall not consider whether it is safe to operate freight cars which exceed the maximum width specified

in the general order. The purpose of General Order No. 26-D was to specify the minimum clearance requirements for railroads and street railroads to be observed in all construction or reconstruction of tracks or structures adjacent to tracks in California. The minimum side clearance requirement is the shortest distance from the center line of the track to a structure or obstruction at the side of the track and is applicable only to tracks on which freight cars having a width less than 10 feet 10 inches are transported. Wider freight cars decrease the distances between the side of the car and trackside structures and obstructions on which the minimum side clearances are based to insure the safety of the public, operating personnel, and property. Absent a Commission-authorized deviation, General Order No. 26-D prescribes the requirements for safety and should be adhered to as the standard for safe operations.

Interim Authorization

After receiving verbal authorization from the Commission staff to move the excessively wide cars, UP by letter of March 10, 1977, requested authority to deviate from Section 3.19 of General Order No. 26-D in the movement of cars UP 229580 through UP 229589, which measure 11 feet 11 inches wide to the exterior side ladders, pending modifications to reduce the width of each car to not more than 10 feet 10 inches as required by the general order. The requested authority was granted by Commission Resolution No. S-1420 on March 29, 1977, under the condition, among others, that the cars be placarded as being of excessive width.

After UP filed this application for a permanent deviation on May 31, 1977, authority to operate excessive width cars until the Commission acted on the request was granted on June 21, 1977, by Resolution No. S-1423.

A staff witness testified that in July 1977 and until January 26, 1978, he had examined the cars both in service and in storage on numerous occasions and found no placards as ordered in Resolution No. S-1420.

On February 10, 1978, counsel for UP advised that the required placarding had been stenciled on the cars which are being used to move Douglas's DC-10 airplane wings.

#### Modification of Cars

A civil engineer employed by UP for design and stress analysis of cars testified that the excess width of the cars could be eliminated by removing the present ladder stiles and installing a handhold directly to the car body. The witness estimated that the cost per car would approximate \$880.

#### Violations

The record reflects that there may have been violations of General Order No. 26-D in that the placards required by Resolution No. S-1423 (authorizing use of the excessive width cars) were not in place. UP is admonished to fully comply with Commission orders. Under the circumstances we are not inclined to institute proceedings to seek possible sanctions against UP. But this does not mean UP need not heed the above admonishment.

#### UP's Requested Exemption

The record indicates that UP can modify the excessive width cars to bring them into conformance with General Order No. 26-D for a cost of only \$880 per car. This relatively minor cost to modify the rail cars weighed against public safety leads us to conclude the requested exemption should not be granted.

#### Findings

We find that:

1. The special aircraft wing freight cars can be modified to conform to Sections 3.19 and 3.20 of General Order No. 26-D at a cost each of approximately \$880.
2. Public safety will be better served if the rail cars in question are modified to be in conformance with General Order No. 26-D standards.

Conclusions

We conclude that:

1. The request of UP and Douglas for a permanent exemption from General Order No. 26-D to transport specially designed railroad cars in California should be denied.
2. The authority to move excessively wide cars granted by Commission Resolution No. S-1420 should be extended no more than three months after the effective date of this order.

O R D E R

IT IS ORDERED that:

1. The request of Union Pacific Railroad Company and McDonnell Douglas Corporation for a permanent exemption from the provisions of General Order No. 26-D, Sections 3.19 and 3.20, to allow movement of fourteen excessively wide freight cars within California is denied.
2. The authority to move excessively wide freight cars within California granted by Resolution No. S-1420 is extended to ninety days after the effective date of this order. Thereafter Union Pacific

Railroad Company and McDonnell Douglas Corporation shall only transport aircraft wings within California in freight cars that fully comply with the provisions of General Order No. 26-D.

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

Dated at San Francisco, California, this 19th day of DECEMBER, 1978.

Robert B. Bunker  
President  
William J. ...  
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...  
Commissioners