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Decision No. S0412

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, )

Complainants, )

vs. )

SOUTHERN PACIFIC TRANSPORTATION CO., a Corporation, )

Defendant. )

Case No. 10575  
(Filed May 18, 1978)

ORDER DENYING REHEARING OF D. 90018

Southern Pacific Transportation Co. has filed an application for rehearing of Decision No. 90018. The Commission has considered each and every allegation contained therein and is of the opinion that good cause for granting rehearing has not been shown. Therefore, IT IS ORDERED that rehearing of Decision No. 90018 is hereby denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 5th day of JUNE 1, 1979.

John E. Coyne  
President

Herbert L. Stinson

Richard D. Hoole

Robert J. [unclear]

Donald W. [unclear]  
Commissioners

KD

Decision No. 90018 February 27, 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, )  
STATE OF CALIFORNIA, )

Complainants, )

vs. )

SOUTHERN PACIFIC TRANSPORTATION )  
CO., a Corporation, )

Defendant. )

Case No. 10575  
(Filed May 18, 1978)

Owen L. Gallagher and Douglas Ring, Attorneys  
at Law, for County of Los Angeles; and  
Robert A. Munroe and O. J. Solander,  
Attorneys at Law, for State Department of  
Transportation; complainants.

Charles W. Burkett and Carol A. Harris,  
Attorneys at Law, for Southern Pacific  
Transportation Company, defendant.

D. H. Brey, for Brotherhood of Locomotive  
Engineers; James P. Jones, for United  
Transportation Union, California Legis-  
lative Board; and Eugene C. Given, for  
Greyhound Lines, Inc.; intervenors.

William J. Jennings, Attorney at Law, and  
Richard C. Collins, for the Commission staff.

ORDER DENYING MOTION TO DISMISS

By this complaint filed May 18, 1978, County of Los Angeles and State of California Department of Transportation request an order of the Commission directing Southern Pacific Transportation Company (SP) to operate passenger train service between Los Angeles and Oxnard.

On October 6, 1978, SP filed a motion requesting that the complaint be dismissed for lack of jurisdiction to grant the relief sought.

Oral argument on the motion was heard before Administrative Law Judge Daly on November 13, 1978, at San Francisco at which time and place the motion was taken under submission.

Based upon the following jurisdictional facts, which were introduced as Exhibits 1 and 2, SP contends that the Commission is without jurisdiction to require SP to provide a passenger commute service on its Coast Route between Oxnard and Los Angeles:

Exhibit 1

C. H. Howard  
Manager, Regional Sales Administration  
Southern Pacific Transportation Company

Occupied various positions, including Assistant General Freight and Passenger Agent and Assistant Traffic Manager, in the Passenger Department, Los Angeles Division. All southern California passenger operations on SP Coast Route between Oxnard and Los Angeles involved intercity trains, and commute passenger trains were never operated between said points. With the passage of the Rail Passenger Service Act of 1970, SP entered into contracts with the National Rail Passenger Corporation (Amtrak). As of that time SP's passenger trains in California were intercity passenger trains with the exception of its peninsula commute trains which operate between San Francisco and San Jose. Exhibit A, attached to Exhibit 1, is a copy of SP's "Cancellation Supplement" issued March 22, 1971, canceling its local, interdivision, and joint passenger tariffs pursuant to the Rail Passenger Service Act of 1970. All local, interdivision, and joint California intrastate tariffs issued by SP as shown in Exhibit A were canceled effective May 1, 1971. SP's participation in joint tariffs issued by the Transcontinental Railroad Passenger Association, the Western Railroad Passenger Association, and the Southwestern Railroad Passenger Association was canceled effective September 1, 1971, for intrastate passenger traffic. By order served April 12, 1972, the Interstate Commerce Commission ordered that all joint passenger tariffs in which SP participated and all individually issued passenger tariffs of SP relating to passenger service terminated under the

authority of the Rail Passenger Service Act of 1970 be stricken from its files. As of May 1, 1971, SP has not furnished any rail service between Oxnard and Los Angeles or on any line in the Los Angeles Metropolitan Area. Amtrak presently operates "The Coast Starlight" daily over SP's Coast Route main line to and from Los Angeles Union Passenger Terminal with stops at Oxnard and Glendale. SP has leased to Amtrak its former passenger-related space at all three stations.

Exhibit 2

A. M. Cole  
Special Assistant to the Superintendent  
of the Operating Division, Los Angeles  
Division

Was employed by Pacific Electric, a wholly owned subsidiary of SP, which operated an electric interurban railroad service for the commutation of passengers and some freight in the Los Angeles basin from 1911 until its merger into SP in 1965. Pacific Electric never furnished any passenger commutation services between Los Angeles and Glendale or Oxnard over the rail lines of Southern Pacific.

SP argues that when it canceled its tariffs and discontinued all passenger operations in Los Angeles and Ventura Counties, it was no longer a common carrier of passengers in that area, and the Commission lacks jurisdiction to compel it to provide service as requested in the complaint.

SP takes the position that, although it is a common carrier of freight between Los Angeles and Oxnard, it no longer is a common carrier of passengers between said points; and in the absence of a finding of rededication, the Commission cannot require SP to provide the service requested.

Exhibits 1 and 2 clearly establish that SP was engaged in the transportation of persons and property within the meaning of Article XII, Section 3 of the California Constitution and Section 211(a) of the California Public Utilities Code between Los Angeles and Oxnard until 1971. When SP entered into contracts with Amtrak,

it assertedly was relieved of all of its responsibilities as a common carrier of passengers by rail in intercity rail passenger service under Part 1 of the Interstate Commerce Act or any state or other law relating to the provisions of intercity passenger service. Although it emphasizes the fact that its passenger service between Los Angeles and Oxnard was intercity as opposed to commute, it provided no statutory or case authority for the distinction insofar as dedication is concerned.

SP also failed to cite any authority from this Commission to abandon its responsibility and obligation to provide passenger service between Oxnard and Los Angeles, and such prior authorization is required. (Marin Co. Elec. Rws. (1914) 4 CRC 503; Key System Transit Co. (1924) 25 CRC 363; and Lennon et al. v Bayside Lumber Co. (1916) 10 CRC 116.) In the latter decision the Commission specifically held that:

"If defendant was a common carrier, it could not legally escape its obligations to the public by the simple expedient of leasing its line of railroad and part of its equipment. Furthermore, defendant, if it was a common carrier, could not cease operations as such carrier unless the Railroad Commission's consent had first been secured. No application for such consent was ever made by defendant."

Applications for the discontinuance of specific trains operating between San Francisco and Los Angeles over the Coast Route were granted, but the last train that SP operated over its Coast Route between said points was "The Coast Daylight" and it was discontinued on May 1, 1971, by a tariff filing, as evidenced by Exhibit A attached to Exhibit 1. No application was ever filed with this Commission requesting authority to abandon passenger service.

We are not prepared to say whether the Rail Passenger Service Act of 1970 constitutes a preemption by the federal government of the Commission's jurisdiction to regulate intrastate rail passenger service because of the recent amendment to the California Constitution

(Article 3, Section 3<sup>1/2</sup>), which states that a state agency has no power to declare a statute unenforceable or to refuse to enforce a statute on the basis of preemption by a federal law unless such a determination has been made by an appellate court.

We are unaware of any appellate court determination of this issue and will therefore pursue our constitutional and statutory authority with respect to the regulation of intrastate rail passenger service.

For the above-discussed reasons, the motion to dismiss for lack of jurisdiction will be denied.

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1/ "(1) Sec. 3.5 An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

"(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of its being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;

"(2) To declare a statute unconstitutional;

"(3) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulation."

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IT IS ORDERED that the motion of Southern Pacific Transportation Company to dismiss the complaint filed in this proceeding for lack of jurisdiction is denied.

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

Dated at San Francisco, California, this 27th day of February, 1979.

JOHN E. BRYSON  
President  
VERNON L. STURGEON  
RICHARD D. GRAVELLE  
CLAIRE T. DEDRICK  
LEONARD M. GRIMES, JR.  
Commissioners