

ORIGINAL

Decision 93206 JUN 16 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The California State Legislative Board)
of the United Transportation Union, a)
Labor Organization (formerly The)
California State Legislative Committee)
of the Order of Railway Conductors and)
Brakemen, a Labor Organization),)

Complainant,)

vs)

Southern Pacific Company, a Corporation,)

Defendant.)

Case 7466
(Petition for Order to Show
Cause filed March 7, 1979)

Investigation on the Commission's own)
motion into the operations and practices)
of the SOUTHERN PACIFIC COMPANY, a)
Corporation, with respect to the use in)
service of cabooses in conformity with)
provisions of General Order No. 114.)

Case 7495
(Petition for Order to Show
Cause filed March 7, 1979)

James F. Gilwee, Attorney at Law, and J. L. Evans,
for United Transportation Union, complainant.
Robert S. Bogason and Gary A. Laasko, Attorneys
at Law, for Southern Pacific Transportation
Company, defendant in C.7466, respondent in
C.7495.

Sheldon Rosenthal, Attorney at Law, special
appearance for members of the Commission staff
under subpoena.

O P I N I O N

This is a contempt proceeding involving alleged violations
of the Commission's General Order (GO) 114, which deals with
minimum safety, health, and comfort regulations for cabooses, and a
cease and desist order issued in Decision (D.) 65746 entered on
July 23, 1963.

GO 114 became effective on October 2, 1961. On December 4, 1962 the predecessor of The California State Legislative Board of the United Transportation Union (UTU) filed Case (C.) 7466 against the predecessor of the Southern Pacific Transportation Company (SP). The complaint alleged that SP was violating GO 114. On December 4, 1962 in C.7495, the Commission instituted an investigation on its own motion to determine whether SP had violated GO 114. C.7466 and 7495 were consolidated for hearing. In D.65746 the Commission found that SP had "violated Section 702 of the Public Utilities Code by failing to comply with General Order No. 114...." The ensuing order provided that:

"IT IS ORDERED that Southern Pacific Company, a corporation, shall cease and desist from failing to comply with any of the requirements of General Order No. 114."

On March 7, 1979 UTU filed a Petition for Order to Show Cause in Re Contempt and supporting affidavits. The Petition alleged violations of GO 114 and D.65746. The Commission issued an Order to Show Cause Re Contempt in C.7466 and 7495 by D.90477 entered on June 19, 1979.

A duly noticed public hearing was held in this matter before Administrative Law Judge (ALJ) Donald B. Jarvis in San Francisco on January 23, 24, 25; May 19, 22, 23; and August 18, 19, 1980. The proceeding was submitted subject to a late-filed exhibit and briefs which were received by December 8, 1980.

Summary of Decision

The decision holds that penalties cannot be imposed for any violations of GO 114 which occurred prior to March 7, 1978. It finds SP engaged in a continuing course of conduct of lax compliance with GO 114 and orders remedial action. The decision finds SP is in contempt of the Commission on 13 counts and imposes a fine of \$5,100.

Material Issues

The material issues presented in this proceeding are:

1. Do any of the counts alleged by UTU constitute violations of GO 114 or the cease and desist order in D.65746?
2. Does the statute of limitations apply to any of the alleged acts of contempt?^{1/}
3. If actionable contempt has occurred what penalty and/or remedial action should be imposed?

The Nature of Contempt

The Commission has the same power of contempt as courts of record. (Cal. Const., Art. XII, § 6; PU Code § 312; Van Hoosear v Railroad Commission (1922) 189 Cal 228.) Failure to obey a Commission general order or decision is punishable by contempt. (PU Code § 2113; Code of Civil Proc. § 1209.) Each act of contempt is punishable by a fine of not more than \$500 or imprisonment not exceeding five days, or both. (Code of Civil Proc. § 1218.)

"[A] proceeding in contempt is regarded as a case that is criminal or quasi-criminal in nature, in which the state is the real plaintiff or prosecutor. Even where the conduct constituting the contempt arises in a civil action, or the proceeding for contempt is merely ancillary to a civil action, the proceeding may be regarded as of a criminal nature. Thus, contempt is not regarded as a civil action either at law or in equity." (14 Cal Jur 3d § 50, pp. 96-97.)

^{1/} Since the cease and desist order mandates compliance with GO 114 the ensuing discussion, for brevity, will generally only refer to GO 114 with the understanding that a violation of GO 114 is also a violation of the cease and desist order.

Since contempt is criminal in nature the procedural and evidentiary requirements are the most rigorous and exacting of all matters handled by the Commission.

"Since contempt proceedings are criminal in nature, the prescribed procedural safeguards must be accorded the alleged contemnor. The accusation must be supported the same as any other criminal charge and is subject to the same presumptions. The judgment of conviction must be governed by the rules applicable to criminal cases, and no intendments or presumptions in favor of the regularity of the proceedings may be indulged as against the alleged contemnor to sustain the sufficiency of the accusation, the affidavit, the evidence, the findings, or the order adjudging contempt, all of which must be construed in his favor." (14 Cal Jur 3d § 51, p. 98.)

The burden of proof in a contempt proceeding is higher than in any other type of proceeding before the Commission.

"Since a contempt proceeding is criminal or quasi-criminal in nature, the contempt must be proved beyond reasonable doubt. A mere preponderance of the evidence is not sufficient." (14 Cal Jur 3d § 71, p. 124.)

Procedural Stipulations

The UTU alleged 746 instances of contempt. These incidents were reported to the UTU by its members generally on a form entitled "Report of Bad Order Cabooses" which it provides. When the UTU receives a report of an alleged violation of GO 114 it transmits it to the Commission's Railroad Safety Section staff (staff). The staff forwards the complaint to SP for response. Depending on the nature of the allegation or response the staff may investigate the alleged incident.

At the commencement of the hearing UTU called a percipient witness who testified about a few of the alleged violations. Near the conclusion of the second day of hearing the presiding ALJ stated:

"ALJ JARVIS: I am going to inquire either after the recess or at the conclusion of the witness how many further witnesses the moving party has and how many the respondent has.

"I am troubled by taking two days per witness with the large number of counts that are before the Commission of the alleged violations.

"And I may have some thoughts depending on what I hear as to how to expedite the proceeding.

"I will say that I am reluctant initially to limit the number of counts, because if all the counts were proven and everything were proven, which I don't suggest have been, then, of course, to reduce the number of violations would make any penalty insignificant and be a premium on doing business.

"If I limit it to three counts, assuming a maximum of \$500 a count, it is certainly worth it as a cost matter to continue doing things.

"On the other hand, were I to permit two days per 200 counts, while the magnitude of the penalty might be great, the Commission's calendar is somewhat encumbered.

"So I have some thoughts about this and I am only expressing concern at this point.

"I am going to ask counsel to indicate the number of witnesses and perhaps counsel may figure out among themselves how the matter could be expedited.

"That is certainly more preferable in [sic-than] the directions coming from me, because if there is an agreement then both parties are more likely to be happy. ✓

"If not, I will have to consider it.

"I only mention my thinking--and I do it on the record so that everybody is aware of it and you won't fall flatfooted later this afternoon." (RT 374-75.)

Subsequently, a conference with counsel for the parties was held. Thereafter, UTU and SP entered into the following stipulations:

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Subsequently, a conference with counsel for the parties was held. Thereafter, UTU and SP entered into the following stipulations:

1. James L. Evans and James P. Jones are officers of UTU. They were not percipient witnesses to any of the alleged violations. Their information was derived from the Reports of Bad Order Cabooses made by UTU members. Evans and Jones transmitted their allegations to the Commission. Some were investigated by the staff. The staff would refer the allegations to SP for response. The staff would transmit the SP response and the results of any independent investigation it may have conducted to UTU. Evans and Jones filed prepared testimony concerning each of the alleged violations. The parties stipulated that:

" The UTU has filed the joint prepared testimony of Mr. Evans and Mr. Jones.

" [Paragraph] Four of each of those quotes Southern Pacific's response to the PUC regarding the violations alleged in paragraph 4 of each of the prepared statements.

"We will stipulate that in those cases where the PUC sent to Mr. Evans or his predecessor a copy of the Southern Pacific letter to the PUC, that the letter from SP to the PUC was sent by Southern Pacific in the ordinary course of the business of Southern Pacific and was the reply of Southern Pacific.

"In those instances where Mr. Evans' and Mr. Jones' purport to summarize or do not attach a document from Southern Pacific, we have been informed that they have merely -- by they, I mean Mr. Evans and Mr. Jones -- have merely quoted the Southern Pacific response.

"And we will stipulate that the quotation of the Southern Pacific response by Mr. Evans and Mr. Jones was the Southern Pacific response." (RT 387.)

2. Wayne Kingston is an employee of SP. He was not a percipient witness to any of the alleged violations. He was permitted to file prepared testimony. It was stipulated that:

"Mr. Kingston -- Southern Pacific will remove the original prepared testimony of Mr. Evans and Mr. Jones previously filed with the Commission, and that he will attach the original of his prepared testimony as well as any pertinent Southern Pacific correspondence to the original of the prepared testimony of Mr. Jones and Mr. Evans." (RT 388.)

In accepting the stipulations the presiding ALJ provided that copies of original documents could be attached, if available. A procedure was established for the correction of inadvertent errors in the prepared testimony.

The presiding ALJ correctly ruled that portions of the prepared testimony were hearsay and not admissible. He ruled that they were admissible as part of the res gestae to establish admissions or declarations against interest (Evidence Code §§ 1220, et seq.; 1230) or a business record (Evidence Code §§ 1270, et seq.). Under the ruling, statements in the prepared testimony of Evans and Jones about the alleged violations, which are hearsay, cannot be used to establish the violations. Oral or written responses of SP to staff inquiries about the alleged violations may contain admissions or declarations against interest which can be used on the merits to establish violations. Admissions in the prepared testimony of Kingston and SP business records may also be used on the merits to establish violations.

Statute of Limitations

SP contends that the statute of limitations bars consideration of any of the alleged acts of contempt which occurred more than one year prior to the motion and affidavits seeking the order to show cause.

SP argues that all of the alleged acts of contempt would constitute misdemeanors under §§ 2110 and 7614 of the Public Utilities Code (PU Code). The statute of limitations for a misdemeanor is one year. (Penal Code § 801.) In Goodall v Superior Court (1918) 37 CA 723, the Court of Appeal stated:

"It is quite true that when an act sought to be punished constitutes a crime, the court may by analogy adopt the limitation prescribed by statute for criminal prosecutions." (37 CA at p. 726.)

SP asserts that the rule enunciated in Goodall is applicable to the case at bench and that the Commission approved the rule in In re Galik (1937) 40 CRC 555.

UTU contends that a one-year statute of limitations is not applicable. It agrees that all of the alleged violations would be misdemeanors. UTU argues that the language in Goodall is permissible rather than mandatory and that the Commission should use the doctrine of laches, which UTU asserts would permit consideration of all the alleged violations. UTU also argues that even if a one-year statute be deemed applicable in this proceeding, it would not bar consideration of prior violations. It cites cases dealing with estoppel, nuisance, and conspiracy in support of this proposition.

The record indicates that UTU had knowledge of each of the alleged violations near the time of their occurrence. No issue is presented with respect to concealed violations or whether knowledge of violations is necessary for the statute of limitations to commence running. We do not consider or pass upon these questions in this decision.

UTU contends that SP should be estopped from asserting the statute of limitations because SP's conduct gave UTU the impression that the violations were unintentional and temporary and compliance with GO 114 would occur without the necessity of filing a formal

proceeding. Estoppel is based on deceit. (Civil Code §§ 1709, 1710; Evidence Code § 623.) Assuming, arguendo, that estoppel may be used to toll the statute of limitations there are not sufficient facts in the record to justify invoking that doctrine. There is no credible evidence which would indicate that any of the conduct of SP established in this proceeding was done with the intention of inducing UTU not to file contempt proceedings.

UTU's reliance on cases dealing with nuisances and conspiracies is misplaced. This contention was answered by Justice Holmes in Gompers v United States (1914) 233 US 604 where he stated at page 610:

"The boycott against the company was not called off until July 19 to 29, 1910, and it is argued that, even if the statute applies, the conspiracy was continuing until that date (United States v Kissel, 218 U.S. 601, 607, 54 L. ed. 1168, 1178, 31 Sup. Ct. Rep. 124), and therefore that the statute did not begin to run until then. But this is not an indictment for conspiracy, it is a charge of specific acts in disobedience of an injunction. The acts are not charged as evidence, but as substantive offenses; each of them, so far as it was a contempt, was punishable as such, and was charged as such, and therefore each must be judged by itself...."

The question to be determined is does a statute of limitations apply to acts committed in violation of GOs or cease and desist orders issued by the Commission?

In Goodall the Superior Court dismissed a proceeding seeking to have the respondent held in contempt for violating a perpetual injunction. The Court of Appeal reversed the action. The Court stated as dicta the language previously cited but held the rule not applicable because the acts alleged did not constitute a crime:

"It is quite true that when an act sought to be punished constitutes a crime, the court may by analogy adopt the limitation prescribed by statute for criminal prosecutions. (Gordon v Commonwealth, 141 Ky. 461, [133 S.W. 206]; Beattie v People, 33 Ill. App. 651.) This principle, however, has no application to the instant case, for the reason that the acts complained of did not constitute a crime." (37 CA at p. 726.)

The Court held that there was no evidence of laches since:

"The injunctive order was perpetual, and if the acts of Mrs. Moore in obstructing the flow of water in the creek continued for four years constituted a disobedience thereof, petitioner was entitled to proceed against her in contempt proceedings at any time, subject to her right to plead a continuance of the obstruction under circumstances and for a period of time from which a grant so to do would be implied." (37 CA at pp. 726-7.)

Absent a statute, the dicta stated in Goodall is the rule which prevails in many jurisdictions in the United States. (38 ALR 2d 1131, 1133 et seq.; but see Osborne v Owsley (1954) 364 Mo. 544, 264 SW 2d 332, cert denied 384 US 822, 99 L ed 648.)

Galik is not directly in point. In that case the Commission issued a cease and desist order on December 10, 1932, which became effective on January 7, 1933. The act of contempt occurred on January 10, 1936. The affidavit and application for an order to show cause was filed on February 4, 1936. The respondent contended that the statute of limitations barred enforcement of the cease and desist order - in effect it terminated the order. The Commission rejected this contention, pointing out that the cease and desist order was akin to a perpetual mandatory injunction which was not subject to the statute of limitations. The Commission cited Goodall in its discussion but held it was not applicable because the violation charged occurred within one month prior to the filing of the motion and affidavit for the order to show cause.

Extensive research discloses one California case in point which the Commission deems to be controlling. In Alpine Palm Springs Sales, Inc. v Superior Court (1969) 274 CA 2d 523, the respondent contended that the proceeding was barred by the statute of limitations in § 801 of the Penal Code or subdivisions 1 and 2 of § 340 of the Code of Civil Procedure. Penal Code § 801 is the one-year statute for misdemeanors referred to in Goodall. Sections 335 and 340 of the Code of Civil Procedures provide as follows:

"§ 335. The periods prescribed for the commencement of actions other than for the recovery of real property are as follows:"

* * *

"§ 340.

"Within one year:

"1. An action upon a statute for a penalty or forfeiture, when the action is given to an individual, or to an individual and the state, except when the statute imposing it prescribes a different limitation;

"2. An action upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the people of this state...."

The Court of Appeal held the one-year statute of limitations in § 340 to be applicable.

"Since the trial court's ruling was that the Alpine group had wilfully disobeyed the court's order, this could place the contempt in the misdemeanor (criminal) category. However, the trial judge made no such conclusion. Thus it is more appropriate to classify it as a civil contempt (perhaps with quasi criminal overtones) and to apply the limitations statutes set out in the Code of Civil Procedure. In any event the period is one year." (274 CA 2d at p. 538.)

This is consonant with the holding of the United States Supreme Court in Gompers which states: "The power to punish for contempt must have some limit in time...." (233 US at p. 612.)

In sum, a GO is a continuing mandate. Cease and desist orders are perpetual injunctions and can be enforced at any time. A continuing violation of a cease and desist order is subject to prosecution for contempt. A GO can be enforced at any time. While the GO and original cease and desist order can be completely enforced in the contempt proceeding, only acts occurring within the period not barred by the statute of limitations can be punished by fine or imprisonment.

In the case at bench UTU alleges that SP engaged in a continuing course of conduct in violating GO 114. The proof adduced includes a series of alleged violations over a period of time on different caboose, dates, and subject matter. The petition and affidavits for an order to show cause were filed on March 7, 1979. We hold that the jurisdiction to punish for contempt exists on acts which occurred from March 7, 1978. Violations which occurred before that date may be considered for the purpose of determining willfulness and intent. (Evidence Code § 1101(b).) They may also be considered in fashioning a remedy to ensure future compliance with GO 114. (Alpine Palm Springs Sales v Superior Court, supra; Standard Business Forms, Inc. (W.D.N.C. 1967) 270 FS 147, 155.)

Acts Which Constitute Violations of GO 114

SP contends that even if the facts alleged in some of the counts are true, they are not actionable because there was no violation of GO 114.

In arguing its interpretation of various provisions of GO 114 SP cites the testimony of a staff witness who testified in C.7002, which resulted in the adoption of the GO. It is a long-established principle that staff testimony is not conclusive on the Commission (City of Palo Alto v Palo Alto Gas Co. (1913) 2 CRC 300, 312). Unless it can be shown that a Commission decision adopted the testimony of a staff witness that testimony is of little probative value in construing the decision.

A. Location of Repair Facilities and Supplies

SP argues that, assuming some of the alleged acts occurred, they were not violations of GO 114 because § 18 of the GO provides that:

"Conditions Arising after Departure from Terminal: In the event a failure of required equipment or standards of maintenance occurs in a caboose after it has commenced a move in service, the railroad operating that caboose shall not be deemed in violation of this General Order if said failure of equipment or standards of maintenance is corrected at the first point at which maintenance supplies are available, or, in the case of repairs, the first point at which materials and repair facilities are available and repairs can reasonably be made."

UTU introduced evidence which indicates that it is possible for SP to operate through cabooses in California with routings which bypass repair facilities and ones where supplies are maintained. However, the evidence does not establish that any of the alleged violations resulted from such a routing. UTU also contends that SP has reduced its caboose repair and maintenance facilities and personnel since the establishment of GO 114.

The contentions of SP and UTU do not accurately reflect the applicable law.

The requirements of GO 114 are mandatory. Inherent in GO 114 is the requirement to establish and maintain sufficient repair and supply facilities to ensure compliance. SP cannot shirk this requirement and urge it as a basis for relieving it of the responsibility for any violations. (Parker v United States (1st cir. 1942) 126 F 2d 370, 379-80.)

GO 114 contains various sections. Whether SP has failed to meet the compliance requirements of a particular section is a question of fact. Compliance may call for more facilities to provide drinking water than to make heavy repairs.

GO 114 was adopted on September 12, 1961 and became effective on October 2, 1961. (General Order No. 114 (1961) 59 CPUC 97.) The order provided a one- and two-year period in which the respondent railroads were given to provide for compliance (Section 1). It cannot be seriously argued in 1981 that SP has not had sufficient time to establish the repair and supply facilities required for compliance with GO 114.

Two factual situations must be noted in connection with the adequacy of repair and supply facilities: (1) cabooses which originate from a California terminal and (2) cabooses on through trains which come into California.

Absent unusual circumstances there is no excuse for a caboose departing a California terminal of origin in violation of GO 114. SP has the duty to establish repair and supply facilities and to see that they are adequately staffed and supplied. This requires maintaining adequate inventories of necessary parts and supplies.

Through cabooses which come into California pose somewhat different problems. SP's manager of car maintenance testified that it is SP's policy to have all pool through cabooses comply with GO 114 and applicable FRA and AAR regulations. Under this policy through cabooses which enter California should be in compliance with GO 114. The evidence indicates a gap between policy and practice.

When a through caboose arrives in California with a violation of GO 114 one of two inferences can be drawn: (1) The caboose left its terminal with the improper condition, or (2) the violation developed en route.

If SP permits a caboose to depart a terminal outside of California knowing it will be in violation of GO 114 when it enters the State, this is an intentional violation of GO 114 and the cease and desist order.

If a caboose departs a terminal outside of California in compliance with GO 114 and a defect develops en route the question becomes when must the defect be remedied to preclude a violation of the GO. As indicated, this is a question of fact, depending on the nature of the defect. This point will be considered in relation to specific alleged violations hereinafter considered.

One reason for SP's problems in complying with GO 114 is its internal organization. The manager of car maintenance has a responsibility for maintaining cabooses and is the liaison between the general manager and chief mechanical officer. The manager of car maintenance has no budget for caboose repairs. Any funds for these repairs are included in the mechanical department's budget. The mechanical department budget is allocated to and administered by division superintendents, who have flexibility in the manner in which the money is spent.

Many of the terminals outside of California from which through cabooses entering California depart are administered by division superintendents located outside of California. In those divisions, where local health and safety rules may not be as rigorous as GO 114, the motivation to allocate significant funds for caboose maintenance from a fixed dollar budget may be lacking.

The superintendents of divisions based in California have the same flexibility in administering their fixed budgets. There is a question of the overall guidance given these superintendents by top management to ensure that appropriate funds are allocated to ensure compliance with GO 114.

B. Refrigerators

Some of the alleged violations involve defective refrigerators. SP contends that refrigerators are not required by GO 114 and that even if there were defective refrigerators no violation of GO 114 occurred. UTU argues that refrigerators are placed in cabooses in order to comply with § 13.

Sections 13 and 17 of GO 114 provide that:

"Sec. 13. Drinking Water: Drinking water facilities shall be installed and maintained so as to provide fresh and pure drinking water. When ice is used for water cooling purposes, the containers shall be so arranged that the drinking water will not come in contact with the ice. Containers used for storing or dispensing potable water shall be kept clean at all times and shall be subjected to effective bactericidal treatment as often as may be necessary to prevent the contamination of the water so stored and dispensed."

* * *

"Sec. 17. Maintenance and Supplies: Caboose shall be supplied with fresh water, paper towels, sanitary drinking cups, fuel, ice as needed, hand soap or other cleaning agent in appropriate dispensers and such other equipment as may be required for service."

The record discloses that SP uses refrigeration units to cool drinking water in its cabooses. Some units have a space to store a lunch or soft drink near the coils. If a refrigerator malfunctions, ice may be provided to cool the water. Drinking water is available at all crew change points.

Among the points between which SP conducts operations are the following ones: Eugene, Oregon - Roseville; Klamath Falls, Oregon - Roseville; Sparks, Nevada - Roseville; Yuma, Arizona - Los Angeles; Roseville - Fresno; Roseville - Oakland. The record indicates, and we take official notice, that during the summertime these routes traverse areas where the temperature is extremely hot. The temperature of interior of the caboose may be higher than that outside. In these circumstances, if there is a broken refrigerator and ice has not been timely provided the temperature of the water may make it unpotable. This would be a violation of GO 114.

UTU presented evidence that on occasion slime or tadpoles have been observed in caboose drinking water containers. There is also evidence that while maintenance cards for water receptacles indicated the water has been periodically changed, in fact this has not been done. To the extent specific instances have been established, these would be violations of GO 114.

On the Eugene and Klamath Falls - Roseville routes it is approximately 355 miles from the Oregon border to Roseville. It is approximately 140 miles from Roseville to Sparks and 250 miles from Yuma to Los Angeles. Under GO 114 SP has a duty to maintain facilities at entry points in California to ensure potable water on cabooses.

First Aid Kits

Section 16 of GO 114 provides that:

"First Aid Kit: Each caboose shall carry in a visible and readily accessible place, a plainly marked first aid kit which shall be so constructed that it and its entire contents are readily removable. The kit shall be fully equipped and maintained in good condition."

In addition, PU Code §§ 7609-11 provide that:

"§ 7609. Every railroad company, or the receiver or receivers thereof, operating trains in whole or in part within this State, shall provide an emergency first-aid kit on each caboose, locomotive, motor or diesel engine. The emergency first-aid kit shall be used only to render first medical or surgical aid to injured passengers, employees, or other injured persons requiring such aid at the first possible moment.

"§ 7610. The employee of any railroad company, or the receiver or receivers thereof, having charge of any passenger train, caboose, locomotive, motor or diesel engine shall report in writing as soon as possible to the office or officer designated by the company or receiver for such purpose, whenever any emergency first-aid kit has been used or has been found missing.

"§ 7611. Any person or any employee of any railroad company, or the receiver or receivers thereof, who removes, carries away from its proper place, or uses any emergency first-aid kit, except for the purpose of administering first aid in the event of injury to any passenger, employee, or other person, is guilty of a misdemeanor, and is punishable by a fine of not less than twenty-five dollars (\$25)."

We are dealing only with GO 114 in this proceeding. SP has a duty under § 16 to maintain first aid supplies at points of entry in California. There is evidence that it does not do so.

SP contends that some of the absence of first aid supplies is due to pilferage and thus there is no violation of the GO. A similar contention was raised in C.7002. In the Proposed Report, which was adopted by the Commission, it was held:

"This proposal seeks, in effect, to have the Commission include in the General Order a fellow servant rule. A fellow servant rule, in general, relieves an employer of liability stemming from the conduct of one employee with reference to another. This rule has been abolished in California. (Labor Code Sec. 2801, Lassen v. Southern Pacific Co., 173 Cal. 71.) The fellow servant rule has also been abolished wherever the Federal Employer's Liability Act, Jones Act, Workmen's Compensation Acts and state employer's liability acts are applicable. Where it still exists courts 'have been astute to ingraft upon it so many modifications and qualifications that little is left of its original import.' (35 Am. Jur. 766.) However, even during the 19th Century, when the rule was applied with full vigor, it did not relieve an employer of the nondelegable duty of providing safe appliances and a safe place to work. (Prosser on Torts, 2d ed., p. 381. See cases collected at 35 Am. Jur. 783.)

"Southern Pacific is a corporation and must, of course, operate through employees. While it may provide suitable work rules for its employees to carry out the provisions of the General Order, Southern Pacific may not shift to them its ultimate responsibility for complying with the order." (Proposed Report, pp. 17-18.)

Fire Extinguishers

Section 15 of GO 114 provides that:

"Fire Extinguisher: Caboose used in road service shall be equipped with an effective means of extinguishing minor fires. Such extinguishing agents shall be placed in a readily accessible location and shall be effectively maintained."

The rationale set forth in the discussion about first-aid kits applies to fire extinguishers.

Lighting

Section 5 of GO 114 provides that:

"An adjustable, shielded electric light, or lights, shall be provided for the direct illumination of the caboose desk. A ceiling or wall light, or lights, operable from separate switches shall be provided to otherwise illuminate the caboose interior. The area of the drinking water and lavatory facilities shall be illuminated. The caboose marker, or markers, shall be electrically lighted. All cabooses constructed after the effective date of this order shall have toilets which are illuminated."

The record indicates, and SP concedes, that there are recurring problems with electrical systems on cabooses. Electricians are the railroad craft responsible for charging and replacing batteries. There are no repair tracks with electricians at most of the entry points into California. GO 114 does not require establishing caboose repair tracks at point of entry. If a caboose departs a terminal with a functioning electrical system and it gets a dead battery en route, § 18 applies.

In this proceeding, it is necessary to interpret GO 114 as it exists. If there are recurring problems in this area they should be addressed in an appropriate proceeding to modify the GO.

Heating and Weatherstripping

Sections 6 and 10 of GO 114 provide as follows:

"Sec. 6. Heating: A heating facility shall be maintained and shall be capable of providing a temperature of at least 70 degrees Fahrenheit in a standard caboose." * * *

"Sec. 10. Weatherstripping: Weatherstripping or weatherproof sash shall be installed and maintained at all windows and doors to protect against weather and the seepage of dirt or dust."

These sections are interrelated in the wintertime. The record indicates that it gets extremely cold in some of the mountain areas in California traversed by cabooses. If a caboose has a stove which is not functioning properly and the caboose has defective weatherstripping the wind-chill factor increases and the condition in the caboose is exacerbated.

As indicated, there are no caboose repair tracks at most points of entry into California. If a caboose departs a terminal with a functioning heater and it breaks down en route, § 18 applies. The same is true for weatherstripping.

The absence of fuel for a functioning heater is another question. The stocking of fuel at entry points is reasonably required by GO 114.

The controversy over weatherstripping centers about when it is defective. Weatherstripping prevents cold wind in winter and hot wind in summer from entering a caboose. It prevents snow, rain, and dust from entering. In tunnels, it prevents gas fumes from reefer and other units coming into a caboose. If weatherstripping fails to serve these functions, it is defective. Whether it is defective in a given instance is a question of fact.

Flatwheels, Drawbar Defects, Excessive Lateral Motion, Absence of Hydrocushion

Some of the alleged violations involve flatwheels, drawbar defects, excessive lateral motion, and the absence of hydrocushion devices. Sections 3 and 4 of GO 114 provide that:

"Sec. 3. Trucks: Trucks shall provide riding qualities at least equal to those of freight type trucks modified with elliptic or additional coil springs or other means of equal or greater efficiency and shall be equipped with steel wheels.

"Sec. 4. Draft Gears: Draft gears shall have a minimum travel of 2½ inches and a minimum capacity of 18,000-foot pounds. Draft gears shall be of rubber or a combination of friction and rubber types, or shall have other means of providing equal shock control."

The dispute over the alleged violations involving these sections is an evidentiary one. SP contends that there were no violations and introduced evidence on that issue. UTU presented technical testimony of two carmen, who repaired cabooses. It argues that the trainmen, who filed the complaints, do not understand the truck and draft gear components of cabooses, and that their evidence must be viewed in conjunction with the general technical testimony.

The Commission will consider the entire record with respect to each alleged violation, which must be resolved on its own facts. We note that UTU has included material about hydro-cushion devices, which was not produced at the hearing, in its Post Trial Brief. (Complainants' Post-Trial Brief, pp. 6-7.) This material was not subject to cross-examination and other tests of an evidentiary hearing. It is not considered in this decision.

Maintenance and Supplies, Screens, Radios

Section 17 of GO 114 provides that:

"Maintenance and Supplies: Cabooses shall be supplied with fresh water, paper towels, sanitary drinking cups, fuel, ice as needed, hand soap or other cleaning agent in appropriate dispensers and such other equipment as may be required for service."

Issues dealing with fresh drinking water, ice, and fuel have already been considered in connection with the basic requirements of §§ 6 and 13. No further discussion is necessary.

UTU contends that screens and radios are "such other equipment as may be required for service" of cabooses. It argues that failure to provide and/or maintain these items is a violation of GO 114.

UTU asserts that "[t]here is no question that Respondent supplies radios, refrigerators and rock screens on their cabooses. There is no question that Respondent requires a trainman to use these facilities." It argues that, as a result, these items are ones "required for service" under § 17.

SP contends that if it voluntarily or because of union agreements provides items that are not required by GO 114 on cabooses these items are not "required for service" under § 17.

A contempt proceeding is not the appropriate vehicle for modifying a GO. However, under the general rules of construction, all of the language of § 17 must be given meaning. (People v. Western Air Lines, Inc. (1954) 42 C 2d 621,638.) Under SP's contention the language "and such other equipment as may be required for service" would be surplusage. This is not correct. If evidence clearly establishes that an item is necessary to implement the provisions of GO 114 that item is within the purview of the cited language of § 17.

A. Screens

Some of the alleged violations of GO 114 involve screens.

UTU's brief argues as follows:

"What is the purpose of rock screens? Imagine, if you will, a metal caboose at six o'clock at night at Red Bluff, California, in August. The heat in the caboose will probably reach 125 degrees. Red Bluff is a notorious area for juveniles and others throwing rocks at cabooses. You are working in a train that does not have rock screens for protection. What is Respondent's approach to this problem. They are very explicit. 'Rock screens are not part of General Order 114 Mr. Employee, enjoy your sauna bath as you work for the friendly SP.'"

Despite the rhetoric, the record is devoid of any evidence dealing with screens. To imply a need under these circumstances would be improper. We do not hold that a need does not exist, just that the evidence does not justify the requested finding.^{2/}

B. Radios

The record indicates that there is a radio in each caboose operated in California by SP. One purpose for which the radios were installed was to enable the conductor on a caboose to notify terminal forces or outbound conductor of the need for supplies or equipment to comply with GO 114. UTU introduced in evidence SP's Rule 845 which provides that:

^{2/} GO 114 applies to all cabooses every day of the year. Even if the assertions in the UTU brief are assumed to be correct, it would appear that the alleged need for screens is seasonal. It is not clear whether the alleged need is uniform throughout California. There is no evidence about the nature of the screens contended for.

"Before leaving his initial station, conductor must be assured that all crew members are present, hand brakes are released, and cabooses are provided with proper tools, supplies and flagging equipment.

"On run-through cabooses inbound conductor is responsible to notify terminal forces or outbound conductor prior to reaching terminal if communication is available, of any tools, supplies or equipment that are not available or any condition requiring cabooses to be changed. If communication not available, conductor must immediately notify terminal forces or outbound conductor upon arrival."

SP's manager of car maintenance on direct examination testified as follows:

"Q Now, assume the train from Portland, a run-through train, comes in through Roseville. Is there any procedure by which the train crew can notify management at Roseville that there is something wrong with the cabooses?"

"A Yes, sir. They should radio in and tell us what the problem is.

"Q And if he fails to radio in and the crew gets on at Roseville heading south, if they discover a defect, is there any procedure for notification, or what can be done to call it to management's attention?"

"A Yes, sir. Again, they can get on the radio and call the yardmaster or terminal officer." (RT 418.)

SP's assistant terminal superintendent at Roseville testified as follows:

"Q All right. Let's back up a second.

"I'm a conductor on a train. Assume that there is a General Order 114 defect.

"Can that defect go through Sparks on its way west without repairs being done?

"A I would assume that it could leave Sparks due to the fact it's not in California.

"Q Okay. Now -- is there a crew change at Sparks?

"A That's correct.

"Q Down the canyon we go. It's my duty as a conductor to notify Roseville of that defect; isn't it?

"A That's correct.

"Q And the way I notify Roseville is how?

"A By radio." (RT 721-22.)

Radios were installed on cabooses for several reasons. (PU Code § 7677.1, GO 110.)

The question presented is whether the use of radio has become so entwined with the implementation of GO 114 that it has become "other equipment required for service" under that GO.

The testimony of the SP officials previously cited clearly indicates that the railroad contemplates that radio is the usual mode for transmitting messages to alert the company to GO 114 deficiencies. Since SP has installed radios on all cabooses and its rules require their use in connection with GO 114 the Commission holds that radios are "other equipment required for service" under GO 114.

Since this decision is the first one to resolve the question about radios, it would be inappropriate to impose any fines for past violations.

Discussion

Specific findings will be made only with respect to violations which occurred within the period not barred by the statute of limitations. Penalties will be assessed only for these violations.

Examination of the alleged violations to which the statute of limitations applies indicates that SP has engaged in a continuing course of conduct of lax compliance with GO 114. Remedial steps will be required in the ensuing order.

This is not an appropriate proceeding to examine the adequacy of SP's repair facilities and personnel staffing at various locations. We have held that certain supplies must be available at terminal points and points of entry. As far as repairs are involved, we have applied § 18 in the light of Exhibit 28 which was introduced in evidence by SP. Exhibit 28 indicates the location of SP caboose maintenance and repair personnel. The following is illustrative:

- A. Count 175 indicates a caboose departed Dunsmuir without electrical power. SP's prepared testimony admits the alleged violation. SP has no electrical repair facilities at Dunsmuir. If the caboose departed its previous terminal which had repair facilities without electrical power and arrived at Dunsmuir in that condition there would be a violation of GO 114. If the failure developed en route, § 18 would apply and there would be no violation. The evidence does not show when the electrical failure occurred. There is not sufficient evidence to find a violation on this count.
- B. Count 93 indicates that a caboose departed Roseville without electrical power. SP's prepared testimony admits the alleged violation. Roseville has electrical repair facilities. A violation of GO 114 occurred.

There are many items in the alleged violations which evidence bad operating practices but are not covered by GO 114. For example, Counts 92 and 168 concern bad toilets. However, the conditions described do not violate any provision of the GO. They cannot be addressed in this proceeding.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. Roseville is the primary repair and maintenance facility for cabooses on the entire SP system. Caboose repairs are made in a special area called the "cab track." The cab track consists of two tracks. Each holds approximately eight cabooses. If there is no room on the cab track, cabooses are stored in another area. Roseville is a crew change point.

2. Heavy overhaul of cabooses is done in SP's Car Shop 9 in Sacramento.

3. Dunsmuir is on SP's Shasta route. It is a crew change point. The distance between Dunsmuir and Roseville is 262 miles. Dunsmuir is under the jurisdiction of SP's Oregon Division. There are no caboose repair facilities at Dunsmuir.

4. Sparks, Nevada is a crew change point for cabooses entering or leaving California. It is approximately 10 miles from Sparks to the California border. Sparks has a facility for repairing diesel locomotives. There are no facilities for repairing cabooses at Sparks. The distance between Sparks and Roseville is 140 miles.

5. Flanigan, Nevada is located within five miles of the California border. It is on SP's Overland Route. Ogden is the eastern terminus. Westbound traffic from Flanigan may go to the following points in California: Wendel, Susanville, and Alturas. The route goes to Klamath Falls or Lakeview, Oregon. There are no caboose repair facilities at Flanigan. The distance between Flanigan and the California-Oregon border is approximately 150 miles.

6. Klamath Falls, Ashland, and Medford, Oregon are points on SP's Shasta Route. It is approximately 15 miles from Klamath Falls to the California border. It is approximately 15 miles from Ashland to the California border. It is approximately 25 miles from Medford to the California border. There is a cab track at Klamath Falls, which is a crew change point. There are no facilities for repairing cabooses at Ashland or Medford. It is 370 miles from Ashland or Klamath Falls to Roseville. It is 380 miles from Medford to Roseville.

7. Yuma, Arizona is on SP's Golden State-Sunset Route. Yuma is located on the Arizona side of the California-Arizona border. SP has a repair facility at Yuma. The distance between Yuma and Colton is 252 miles.

8. The following locations are SP crew change points which have caboose repair tracks: West Colton, Fresno, Bakersfield, Los Angeles, and Oakland. At these locations specific persons are assigned to work on cabooses. They may be called on to work on other tasks.

9. SP has facilities to maintain and make some caboose repairs at Tracy, San Jose, Watsonville, Bayshore, and San Luis Obispo. No personnel are assigned to work on cabooses at these locations. If caboose maintenance or repairs are needed, personnel must be borrowed from other duties or locations.

10. Roseville is the first facility at which trains entering California from Sparks, Flanigan, Klamath Falls, Medford, and Ashland can be repaired.

11. West Colton is the first facility at which trains entering California from Yuma can be repaired.

12. At the time of hearing SP had the following personnel assigned to primarily work on cabooses:

Sacramento Division

Roseville

First Shift - 3 Carman, 2 Electrician, 2 Piper, 1 Laborer, 1 Supplyman
Second Shift - 1 Carman, 1 Electrician, 1 Piper, 1 Laborer, 1 Supplyman
Third Shift - 1 Carman, 1 Electrician, 1 Laborer, 1 Supplyman

Tracy

As needed from roundhouse.

Los Angeles Division

Los Angeles

First Shift - 1 Carman, 2 Electrician, 2 Laborers, 1 Supplyman
Second Shift - 1 Carman, 1 Electrician, 1 Laborer, 1 Supplyman
Third Shift - 1 Carman, 1 Electrician, 1 Laborer, 1 Supplyman

Bakersfield

First Shift - 1 Carman, 1 Laborer, 1 Supplyman
(Electrician borrowed from roundhouse when needed)
Other Shifts - Borrowed from other locations

Fresno

First Shift - 1 Carman, 1 Laborer
(Electrician borrowed from roundhouse when needed)
Other Shifts - Borrowed from other locations

West Colton

First Shift - 2 Electricians, 1 Carman, 1 Laborer
Second and Third Shifts (Each) - 1 Carman, 1 Electrician, 1 Laborer

Western Division

Oakland

First Shift - 1 Electrician, 1 Carman, 1 Laborer, 3 Supplymen
Other Shifts - Borrow from other locations

San Jose, Watsonville, Bayshore and San Luis Obispo

Borrow from other locations

13. SP has an agreement with other railroads, including the Union Pacific Railroad Company (UP). SP uses UP pool cabooses in operations conducted in California. SP does not stock adequate supplies to maintain and repair these cabooses.

14. SP has installed radios on all cabooses which it uses in California. SP's rules require the use of radios in connection with GO 114.

15. The alleged violations of GO 114 and the cease and desist order in D.65746 contained in Counts 1-87, 94-162, 182-623, 636-699, and 701-746 occurred prior to March 7, 1978.

16. If the alleged violations of GO 114 and the cease and desist order in D.65746 which occurred prior to March 7, 1978 were considered on their merits, it would be found that SP violated GO 114 on numerous occasions from November 1968 until March 7, 1978.

17. SP has engaged in a continuing course of conduct of lax compliance with GO 114 and the cease and desist order in D.65746 from November 1968 to date.

18. There is not sufficient evidence in the record to sustain a finding that violations of GO 114 occurred in Counts 88, 90-92, 163-165, 167, 169-171, 173, 175, 178-181, 625, 627, 629-633, and 635.

19. On March 17, 1978 Train No. XW9048 with Caboose SP4213 departed from Dunsmuir with items missing from the first aid kit. (Count 89.)

20. On April 27, 1978 Train No. XE8423 departed Roseville with Caboose SP1911 with an inoperative electrical system. There was no lighting on the caboose and the radio did not function. (Count 93.)

21. On March 21, 1978 Train No. MERVY-21 departed Roseville with Caboose SP4022. There was defective weatherstripping on the caboose, headrests were missing from some seats. and others were in bad condition. (Count 166.)

22. On March 27, 1978 Train No. X933 departed Oakland with Caboose SP1703. The battery was weak which caused dim lights. The radio did not transmit. (Count 168.)

23. On June 5, 1978 Train No. X9132 departed Roseville with Caboose SP4057 which had a radio that did not transmit. (Count 172.)

24. On June 6, 1978 Train No. X6568 departed Bayshore Yard with Caboose UP25237 which had no electrical power. (Count 174.)

25. On July 25, 1978 the Delano Local departed Bakersfield with Caboose SP4323 with an inoperative refrigerator and no ice. (Count 176.)

26. On July 28, 1978 Train No. X3855 departed San Jose with Caboose SP1188 which had no electrical power. There were no lights and the water cooling system did not work. The conductor's seat was missing. (Count 177.)

27. On March 21, 1978 Train No. 750 departed Bakersfield with Caboose SP1157 which had no electrical power. (Count 624.)

28. On March 31, 1978 Train No. 750 departed Bakersfield with Caboose SP1343 which had no electrical power. (Count 626.)

29. On May 24, 1978 Train No. BNRPU-24 departed Bakersfield with Caboose SP4617. There was no oil in the stove and the temperature was 45 degrees. (Count 628.)

30. On July 17, 1978 Train No. OIPBEVY-13 departed Bakersfield with Caboose SP1956 which had no electrical power. (Count 634.)

31. On February 8, 1979 Train No. XW8479 departed Bakersfield with Caboose SP1932 which had no electrical power. (Count 700.)

Conclusions of Law

1. When SP operates a pool cabooses which belongs to another railroad in California that cabooses must comply with GO 114.

2. No penalty can be imposed on SP for violations of GO 114 and the cease and desist order in D.65746 which occurred prior to March 7, 1978.

3. Because of SP's course of conduct in lax compliance with GO 114 and the cease and desist order in D.65746 from November 1968 to date and the violations which occurred after March 7, 1978, the Commission may order SP to take remedial action to insure compliance with GO 114 and the cease and desist order as well as any penalties which may be imposed herein.

4. SP is in contempt of the Commission for the facts in Finding 19 which constitute a violation of §§ 16 and 17 of GO 114 and D.65746. SP should be ordered to pay a fine of \$500 for this violation.

5. Radios are "other equipment required for service" on SP cabooses within the purview of § 17 of GO 114. SP is in contempt of the Commission for the facts in Findings 20, 22, 23, 24, 26, 27, 28, 30, and 31 which constitute a violation of D.65746 and § 17 of GO 114. Since this decision is the first one to resolve the question about radios, it would be inappropriate to impose any fine for past violations in connection therewith.

6. SP is in contempt of the Commission for the facts in Findings 20, 24, 26, 27, 28, 30, and 31 which constitute violations of D.65746 and § 5 of GO 114. SP should be ordered to pay a fine of \$300 for each of these violations for a total of \$2,100.

7. SP is in contempt of the Commission for the facts set forth in Finding 21 which constitute a violation of D.65746 and § 10 of GO 114. SP should be ordered to pay a fine of \$500 for this violation.

8. SP is in contempt of the Commission for the facts set forth in Findings 21 and 26 which constitute violations of D.65746 and § 7 of GO 114. SP should be ordered to pay a fine of \$500 for each of these violations for a total of \$1,000.

9. SP is in contempt of the Commission for the facts set forth in Finding 25 which constitutes a violation of D.65746 and §§ 13 and 17 of GO 114. SP should be ordered to pay a fine of \$500 for this violation.

10. SP is in contempt of the Commission for the facts set forth in Finding 29 which constitutes a violation of D.65746 and §§ 6 and 17 of GO 114. SP should be ordered to pay a fine of \$500 for this violation

11. SP should be ordered to provision all terminal points in California and locations adjacent to points of entry into California with the supplies required by § 17 of GO 114 and to maintain these supplies on a continuing basis.

12. SP should be ordered to inform all of its employees who repair, maintain, or service cabooses which operate in California of the provisions of GO 114 and the necessity for complying with the GO.

13. SP should be ordered to review its internal management and budget structure and take such action as may be necessary to ensure that cabooses operating in California are maintained and supplied in accordance with GO 114.

14. SP should be ordered to conduct a comprehensive study of electrical problems on cabooses operating in California and possible solutions to remedy these problems.

15. The cease and desist order in D.65746 should be continued in effect. ✓

O R D E R

IT IS ORDERED that:

1. Southern Pacific Transportation Company (SP) is in contempt of the Commission for violating the cease and desist order in D.65746 and GO 114 on 13 occasions. It shall be punished for these contempts by paying the following fines:

- a. Contempt shown in Finding 19 for violating §§ 16 and 17 of GO 114 Fine \$ 500
- b. Contempt shown in Finding 20 for violating § 5 of GO 114 Fine \$ 300
- c. Contempt shown in Finding 24 for violating § 5 of GO 114 Fine \$ 300
- d. Contempt shown in Finding 26 for violating § 5 of GO 114 Fine \$ 300
- e. Contempt shown in Finding 27 for violating § 5 of GO 114 Fine \$ 300
- f. Contempt shown in Finding 28 for violating § 5 of GO 114 Fine \$ 300
- g. Contempt shown in Finding 30 for violating § 5 of GO 114 Fine \$ 300
- h. Contempt shown in Finding 31 for violating § 5 of GO 114 Fine \$ 300
- i. Contempt shown in Finding 21 for violating § 10 of GO 114 Fine \$ 500
- j. Contempt shown in Finding 21 for violating § 7 of GO 114 Fine \$ 500
- k. Contempt shown in Finding 26 for violating § 7 of GO 114 Fine \$ 500
- l. Contempt shown in Finding 25 for violating §§ 13 and 17 of GO 114 Fine \$ 500
- m. Contempt shown in Finding 29 for violating §§ 6 and 17 of GO 114 Fine \$ 500

TOTAL \$5,100

The total fines of \$5,100 shall be paid to this Commission within 30 days after the effective date of this order.

2. Within 90 days after the effective date of this order SP shall provision each of its California terminals and crew change points and terminals at which caboose personnel embark for service within California with adequate first aid supplies, fresh water, paper towels, sanitary drinking cups, fuel, ice, and hand soap or other cleaning agent. SP shall thereafter maintain adequate amounts of these supplies at each location.

SP shall notify the Commission's Railroad Safety Section, in writing, when this has been done. SP shall send a copy of the notice to the United Transportation Union (UTU).

3. Within 6 months after the effective date of this order SP shall inform all of its employees who repair, maintain, or service cabooses which operate in California of the provisions of GO 114 and the necessity for complying with its provisions.

SP shall notify the Commission's Railroad Safety Section, in writing, of the measures taken to implement this ordering paragraph. SP shall send a copy of the notice to the UTU.

4. Within 1 year after the effective date of this order SP shall conduct a review of its management and budget structure with respect to ensuring that cabooses operating in California comply with GO 114 and shall take such action as may be necessary to modify its management and budget procedures to effectuate this result.

SP shall notify the Commission's Railroad Safety Section, in writing, of the results of the study and any measures taken. SP shall send a copy of the notice to the UTU.

5. Within 1 year after the effective date of this order SP shall conduct a comprehensive study of electrical systems including radio equipment on cabooses operating in California and possible remedies for any shortcomings.

SP shall notify the Commission's Railroad Safety Section, in writing, of the results of the study. SP shall send a copy of the notice to the UTU.

6. The cease and desist order in D.65746 is continued in full force and effect.

The Executive Director shall cause personal service of this order to be made on SP.

This order becomes effective 30 days from today.

Dated JUN 16 1981, at San Francisco, California.

John E. Guyer President
Richard D. Russell
Samuel M. James
Robert C. ...
Madeline C. ... Commissioners