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Decision 96-09-084 September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Brotherhood of Locomotive Engineers, Complainant, vs. Amtrak Commuter Services, et al., Defendants.	Case 95-10-059 (Filed October 3, 1995)

OPINION DISMISSING COMPLAINT

1. Summary

Defendant National Rail Passenger Corporation (Amtrak) seeks dismissal of this complaint on grounds that it fails to state a cause of action over which the Commission has jurisdiction, and that the issue addressed is a labor/management issue more properly raised in the parties' collective bargaining agreement. We find that the complaint fails to state facts sufficient for us to assert jurisdiction, and we therefore dismiss the complaint.

2. Basis of the Complaint

The Brotherhood of Locomotive Engineers, Division 65 (BLE) complains of Amtrak's decision in 1992 to eliminate the position of fireman/assistant engineer on the Peninsula Commute Service, commonly known as "CalTrain." BLE alleges that this extra pair of eyes in the locomotive could prevent incidents in which pedestrians or vehicles are struck by a train. In a three-year period to June 1992, BLE states that there have been 95 CalTrain incidents, 66 of them involving injuries, fatalities or property damage.

While acknowledging that much of the Commission's authority in regulating railroads has been preempted by federal law, BLE argues that the Commission may as part of its authority over rail safety direct Amtrak to reinstitute the fireman/assistant engineer position on CalTrain. It argues that the Commission may base such action on California's Full Crew Law (Labor Code § 6901), which requires the presence of a fireman in addition to an engineer in any cabcar or locomotive.

3. Amtrak's Response

Amtrak in its answer argues that BLE agreed to the commuter staffing arrangements in its collective bargaining agreement with Amtrak, and that this complaint is an attempt to circumvent the labor contract. It also argues that the Commission lacks jurisdiction to enforce California's Full Crew Law and, in any event, is precluded from doing so by federal law and by California's Anti-Featherbedding statute (Labor Code § 6900.5), which prevents enforcement of the Full Crew Law where a collective bargaining agreement addresses the issue.

Amtrak urges the Commission to dismiss the complaint, and it advances three reasons for doing so. First, it argues, federal law preempts the application of California's Full Crew Law to Amtrak. Second, Amtrak argues that BLE has failed to provide sufficient evidence to link crew size to unsafe operations. Finally, Amtrak argues that California's Anti-Featherbedding statute precludes a change in collectively bargained crew size.

4. Procedural History

BLE's complaint, filed October 3, 1995, includes a report by a safety engineer on the San Jose-San Francisco commuter runs, statements by engineers on their experiences with accidents, and numerous newspaper articles. Amtrak's answer, filed on March 28, 1996, following an unopposed request for extension of time, includes a declaration by the company's superintendent for

Peninsula Commute Service operations and a declaration by the company's director of labor relations. By Administrative Law Judge Ruling dated April 4, 1996 the parties were told that the Amtrak answer would be treated as a motion to dismiss or as a motion for summary adjudication. BLE was directed to respond to Amtrak's request for dismissal and to the company's jurisdictional assertions. BLE filed its response to Amtrak's answer on May 3, 1996.

Based on these pleadings, we turn now to consideration of whether the complaint states facts sufficient to constitute a cause of action over which the Commission has jurisdiction.

5. Discussion

Public Utilities (PU) Code § 1702 requires that a complaint set forth "any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission."

As BLE recognizes in its complaint, this Commission does not have jurisdiction over the issue of Amtrak's alleged violation of Labor Code § 6901, i.e., failure to provide "one engineer and one fireman for each diesel locomotive," with respect to CalTrain. The CalTrain commuter service is not operated by a privately owned utility. It is operated by a local governmental agency, the Joint Powers Board. In Los Angeles Met. Transit Authority v. Public Utilities Com. (1963) 59 Cal.2d 863, the California Supreme Court held that the Commission's jurisdiction is restricted to privately owned utilities unless the Legislature expressly provides jurisdiction over a utility that is publicly owned. Labor Code § 6900 does not provide jurisdiction by the Commission over publicly owned common carriers.

Nevertheless, the Commission has been given express jurisdiction to ensure the safe operation of all railroads within

the state, both public and private, to the extent not preempted by federal law. BLE notes that the Commission may exercise such authority pursuant to PU Code §§ 309.7, 768, 778 and 7671, et seq. Thus, while the Commission does not have jurisdiction to enforce Labor Code § 6901 against CalTrain, as it might a privately owned railroad, the Commission arguably could order increased crew size for the commuter trains if the existing crew requirements were proven to be unsafe generally. This jurisdiction as to railroad safety measures, however, must be tested against any federal preemption.

In 1970, Congress adopted the Federal Railroad Safety Act (FRSA), codified as amended at 49 U.S.C.A. §§ 20101, et seq. The purpose of the FRSA is "to promote safety in every area of railroad operations and reduce railroad related accidents and incidents." (Id. § 20101.) To accomplish that purpose, the act authorizes the Secretary of Transportation to prescribe regulations and issue orders for every area of railroad safety." (Id. § 20103.) The Secretary of Transportation has delegated that responsibility to the Federal Railroad Administration (FRA). (49 C.F.R. § 1.49(m).)

The FRSA declares that railroad safety regulations "shall be nationally uniform to the extent practicable." (49 U.S.C.A. § 20106.) The act, however, allows state regulation of railroad safety in certain circumstances:

> "A State may adopt or continue in force a law, regulation, or order related to railroad safety until the Secretary of Transportation prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety when the law, regulation, or order -- (1) is necessary to eliminate or reduce an essentially local safety hazard; (2) is not incompatible with a law, regulation, or order of the United States Government; and (3) does not unreasonably burden interstate commerce." (Id. § 20106.)

The nature of the Commission's jurisdiction over railway safety matters is illustrated by the case of Southern Pacific Transportation Co. v. Public Utilities Commission (9th Cir. 1987) 820 F.2d 1111. There, the Commission ordered Southern Pacific to bring its Fresno switching yard into compliance with Commission general orders requiring minimum distances between freight cars and structures and between tracks and walkways. The railroad sought declaratory and injunctive relief on grounds that the Commission's general orders were preempted by the FRSA. The District Court held, and the Ninth Circuit affirmed, that the Commission's general orders prescribing minimum safety clearances between tracks and walkways were not preempted by federal law because no federal regulation or order covered the same subject matter.

Unlike the facts in Southern Pacific, the complaint here does not allege violation of a regulation or order of the Commission that deals with the issue of crew size and safety. The PU Code provisions cited by BLE are inapposite. PU Code § 309.7 addresses "rights of way, facilities, equipment, and operations of railroads," especially grade crossing protection. Sections 768 and 778 deal with grade crossings and junctions. PU Code §§ 7671 et seq., deal with hazardous materials transportation by rail. BLE directs us to no Commission rule or regulation that deals with crew size, and we are aware of none. Indeed, the FRSA explicitly preempts state full crew laws with respect to Amtrak.[1]

[1] 49 U.S.C.A. § 24301(i) provides:

"A State may not adopt or continue in force a law, rule, regulation, order, or standard requiring Amtrak to employ a specified number of individuals to perform a particular task, function, or operation." (See also 49 U.S.C.A. § 24501(e) (substantially identical provision with respect to Amtrak Commuter).)

We will comment briefly on the safety issue raised by BLE. BLE in its complaint suggests that many of the 66 injuries on CalTrain since 1992 are tied to the absence of a second person in the cabcar. Its evidence, however, is not persuasive. Newspaper accounts submitted by the union state that at least half of CalTrain fatalities are attributable to suicide. Engineer statements submitted by BLE describe other situations where intoxicated persons failed to respond to repeated sounding of the train's warning horn. It is difficult to fathom how a second person in the cabcar could alleviate these types of incidents. The safety engineer report presented by BLE presents drawings which purportedly show that a second pair of eyes could help eliminate "blind spots" on the left side of the engine, but none of the theoretical problems described in the report are tied to a particular accident that has been reported on CalTrain. Amtrak in its answer presents substantial evidence that it and the Joint Powers Board are engaged in numerous safety programs intended to reduce injuries along the CalTrain line, including elimination of grade crossings. BLE's assertion that safety requires a second person in the cabcar is undercut by its agreement to passenger engineer staffing in its collective bargaining contracts with Amtrak. An "off corridor agreement" last negotiated in 1992 provides that Amtrak may operate locomotives on commuter runs of less than four hours with only an engineer in the cab. The agreement, negotiated under the Railway Labor Act, 45 U.S.C.A. §§ 151, et seq., is applicable to Amtrak commuter runs in many parts of the country, including California. (Amtrak Answer, Declaration of Charles E. Woodcock, Director, Labor Relations.)

6. Conclusion

BLE in its complaint has failed to set forth any act done or omitted to be done by Amtrak that is in violation or is claimed to be in violation of any provision of law or of any order or rule over which this Commission has jurisdiction. The act complained of

is authorized by a collective bargaining agreement negotiated by complainant. Amtrak's request for dismissal of the complaint is granted.

Findings of Fact

1. Complainant BLE filed this case on October 3, 1995.

2. Defendant Amtrak filed its answer on March 28, 1996, together with a request for dismissal for lack of jurisdiction.

3. BLE filed a response to Amtrak's request for dismissal on May 3, 1996.

Conclusions of Law

1. The complaint fails to state facts sufficient to constitute a cause of action over which the Commission has jurisdiction.

2. Defendant's request for dismissal should be granted.

O R D E R

IT IS ORDERED that the complaint is dismissed and Case 95-10-059 is closed.

This order becomes effective 30 days from today.

Dated September 20, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners