

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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| Dorothy Crewdson, Route 6, Lincoln, Nebraska, 68502, |) | |
| Complainant, |) | Formal Complaint No. 1190 |
| vs. |) | Sustained |
| Burlington Northern Railroad Company, St. Paul, Minnesota 55101 |) | ENTERED: January 21, 1985 |

Appearances

Toney Redman, Attorney at Law
1033 O Street
Suite 318
Lincoln, Nebraska
Appearing for Complainant.

Larry L. Ruth, Attorney at Law
1000 NBC Center
Lincoln, Nebraska
Appearing for Defendant.

BY THE COMMISSION:

Opinion and Findings

By complaint filed June 18, 1984, Complainant complains of operating practices of the Defendant and a railroad crossing west of Emerald, Nebraska. On October 24, 1984, the commission held a hearing on the matter following notice of hearing, dated September 21, 1984, to all parties. The hearing was held in the Commission Hearing Room, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Harold Simpson.

Prior to the hearing Defendant moved to dismiss the complaint as not being in a form required by Chapter 1 of the Rules of Commission Procedure, Section 005.05. The hearing officer denied the motion to dismiss.

At the hearing, Complainant and her witness presented evidence of the Complainant's operating practices at a railroad crossing three blocks north of O Street on 91st Street, Emerald, Nebraska. The testimony alleged the excessive speed by trains at the crossing; that railroad cars and trains are parked or stored too close to the crossing to permit vehicle occupants clear view of

the track and approaching trains; the failure by approaching trains to sound horns or whistles; the absence of flagmen or crew when trains are parked near crossing; the failure to clear snow and ice from crossing; weeds and vegetation growing in the area of the crossing. The main concern expressed by the Complainant's evidence was that railroad cars and trains were being parked or stored too close to the crossing.

Defendant's witness discussed the incident and circumstances alleged by Mrs. Crewdson to be unsafe operating procedures of the Defendant at the Emerald crossing. With regard to one incident where the train crew left a train unattended near the crossing, Defendant's witness testified that the crew had been disciplined. Other instances of parking cars or trains within 200 feet of the crossing were defended as necessary for proper operation of the railroad. Defendant's witness pointed out that Complainant and others living north of the Emerald crossing have an alternative route to cross over the tracks by a bridge approximately one-half mile to the west. The witness also stated that Defendant had no control over storage of cars on the north side, siding tract which is owned by a shipper. There are four tracks at this crossing, two side tracks, one on each side of the double main tracks. The witness testified that standard operating procedures included whistling at the crossing, and the adhering to the Federal Railway Administration allowed speed limit. The witness stated that he had no reason to believe that these procedures were not being followed. He further testified that there are no legal requirements for a flagman or breakman to direct traffic at the crossing. He stated that the company is responsible to clear snow and ice from the crossing for motor vehicle crossing. The witness acknowledged that even with the best attempts, it is hard to control all the vegetation within 10 feet of the end of the ties.

DISCUSSION

The 1984 Session of the Nebraska Legislature enacted LB 790. The Bill provides as follows:

"Unless otherwise provided by city or village ordinance, the Public Service Commission, upon complaint or on its own motion, as to the crossing which is the subject of the complaint or motion, may direct that at such crossing, any railroad car that is stored or parked on a railroad track which may be obstructing or obscuring the traffic public's view of any oncoming train be stored or parked at a minimum distance from the crossing of such railroad and public road. The minimum distance shall be that deemed by the commission to be reasonable and necessary to provide a sight clearance of the crossing adequate to protect the safety of the traveling public, but in no instance shall any person who is authorized to control the movement of such railroad car or cars within such distance be prevented from reasonably conducting his or her business."

The commission adopted rules to implement LB 790 on January 15, 1985, Title 291, Chapter 4, 004.09. These rules provide a procedure whereby the

commission may order the movement of railroad cars stored or parked on a railroad track which is obstructing or obscuring the traveling public's view of an oncoming train. The rules also provide a procedure whereby the commission may establish a specific minimum distance for storage or parking of railroad cars from particular crossings.

It is the commission's opinion that it has always had authority to take prompt action when complaints were made concerning safety at any crossings in Nebraska. The rules implementing LB 790 have formalized a procedure for bringing any complaints concerning obstructing or obscuring crossing problems to the attention of the commission, and give the commission the regulatory tools necessary to correct improper railroad action.

After consideration of all the evidence, and being fully advised in the premises, the commission is of the opinion and finds:

- 1) That incidents have occurred at the railroad crossing at Emerald, Nebraska, involving the parking or storage of railroad cars in such a manner as to obstruct or obscure the traveling public's view of approaching trains.
- 2) That the commission intends to make every effort to investigate and regulate the parking and storage of cars near the railroad crossing at Emerald, Nebraska under the procedures set forth in LB 790 and commission rules adopted thereunder.
- 3) That for the safety of the traveling public at the railroad crossing north of Emerald, that the Defendant will not park or store cars or trains within 300 feet of the crossing from the west and 200 feet from the crossing to the east. In the event that it is necessary to park or store trains within the measurements described above, then the Defendant will place a flagman at this crossing and notify this commission.
- 4) That the complaint is sustained as discussed above.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that the complaint be sustained.

MADE AND ENTERED at Lincoln, Nebraska, this 21st day of January, 1985.

NEBRASKA PUBLIC SERVICE COMMISSION

Harold D. Simpson
Chairman

ATTEST:

Donald Adams
Executive Secretary

COMMISSIONERS CONCURRING:

Duane D. Gay

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 4 - RAILROADS

004 CLEARANCES

PROPOSED SUBSECTION (9) TO CHAPTER 4, SECTION 4
OF THE NEBRASKA PUBLIC SERVICE COMMISSION RULES AND REGULATIONS

004.09 Railroad Car Storage or Parking Distance from Crossings.

- 004.09A Upon complaint or on its own motion, the commission may direct that any railroad car or cars stored or parked on a railroad track which may be obstructing or obscuring the traveling public's view of any oncoming train be stored or parked at a minimum distance from the crossing of such railroad track and particular public road.
- 004.09B A person who has been directed by the commission under 004.09A to move a railroad car or cars may file an application for a hearing on the matter. The commission shall hear the matter within 7 days of the filing of the application.
- 004.09C After notice and hearing, the commission may establish a specific minimum distance for storage or parking of a railroad car or cars from the crossing of a railroad track and a particular public road, and it shall be that distance reasonable and necessary to provide a range of vision at the crossing adequate to protect the safety of the public using the crossing.
- 004.09D The minimum distance established by the commission for storage or parking of railroad cars shall be a distance which will not interfere with the reasonable conduct of the business of a person who is authorized to control the movement of a railroad car or cars.

