

DECISIONS OF

The Public Service Commission

OF THE

COMMONWEALTH OF PENNSYLVANIA

AND OF THE

APPELLATE COURTS IN APPEALS THEREFROM

JULY 1, 1917 TO JUNE 1, 1919

VOLUME III



HARRISBURG, PA.:

J. L. L. KUHN, PRINTER TO THE COMMONWEALTH
1920.

putting the Saxonburg highway under the railroad and closing the Cabot crossing to public use. Either of these methods would involve the expenditure of a larger sum than the proposed plan contemplates, but we are of the opinion and find and determine that the construction of the proposed crossings at grade is not under the circumstances either necessary or proper for the service, safety, accommodation and convenience of the public. An order will be drawn accordingly refusing the application in this case.

ORDER.

This matter being before The Public Service Commission of the Commonwealth of Pennsylvania, upon application of the Pennsylvania Railroad Company for a certificate of public convenience, and having been duly heard and the Commission having on the date **hereof made** and filed of record a report containing its findings of **fact and conclusions** thereon, which report is hereby approved and **made a part hereof**:

NOW, to-wit, September 25th, 1917, **IT IS ORDERED**: That the application in this proceeding be, and the same hereby is refused.

COMPLAINT DOCKET No. 483.

W. W. WILMARTH AND SONS

vs.

**THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD
COMPANY.**

In straightening and relocating its tracks in Susquehanna County, the railroad of respondent was shifted about six-tenths of a mile. By this relocation a switch, used by complainants for many years, became useless, and they had to travel an additional distance and to make use of, in reaching the new station, a road which was in bad repair. Complainants contended respondent had no right to relocate

its tracks, due to the fact that forty years prior thereto the people of Kingsley subscribed money to aid in the building of a station for the railroad, and that the relocation was in violation of an agreement to keep the railroad there.

The Commission held that even if such an agreement existed, it was without authority to enforce any rights thereunder, if any such remained after the lapse of these years, for redress was to be found in another forum; that it was the undoubted right of the railroad to relocate its tracks in accordance with law and the railroad, in this case, appeared to have followed the procedure required by the various Acts of Assembly prescribing the requisites for widening, straightening and relocating a roadbed.

The Commission dismissed the complaint, but ordered the respondent to repair the highway leading up to the new station, pursuant to an agreement to that effect.

APPEARANCES:

F. A. Davis, Representing the Complainant.

J. H. Oliver, Frederic W. Fleitz, H. A. Denny, Representing the Respondent.

OPINION.

RYAN, *Commissioner*:

In straightening and relocating its tracks in Susquehanna County, the railroad of the respondent was shifted about six-tenths of a mile. The complainants had for many years been making use of a switch located at Kingsley and by the relocation this became useless. The complainants contend that forty years ago, the people of Kingsley subscribed money to aid in the building of a station for the railroad; that the relocation is in violation of an agreement to keep the railroad there; and that the change will result in great loss and inconvenience—in that it causes them to travel an additional distance and to make use of, in reaching the new station, a road which is in bad repair.

The evidence taken before the Examiner deputized to take the testimony discloses that while the citizens did contribute the sum of \$1,350 to help build a station at Kingsley some forty years ago, and did also grade the ground so that the railroad company might construct a switch, yet there was no proof that any agreement was ever made by which the railroad company engaged to reimburse these citizens, nor that these contributors had ever maintained the station or the switch. Even if this agreement existed, our Commission would be without authority to enforce any rights thereunder, if any such remained after the lapse of these years, for redress is to be found in another forum.

It is the undoubted right of the railroad to relocate its tracks in accordance with law, and it appears to have followed the procedure required by the various Acts of Assembly prescribing the requisites for widening, straightening and relocating a roadbed. The real injury complained of is the inconvenience of this relocation in that it requires the complainants to travel an additional six-tenths of a mile.

The Examiner while suggesting in effect the dismissal of the complaint reported that he had conferred with the railroad company and with the counsel for complainants and that the railroad was willing:

“Firstly, to eliminate the steep grade near the old line as soon as the railroad tracks formerly used by this company have been removed * * * by making the grade between the easterly and westerly right of way lines uniform, meeting the highway at the right of way lines at the present grade thereof,” and

“Secondly: We are willing, and here offer, to surface a portion of the road described as extending between the old station and the new station, to-wit: from a point where the said highway crosses Martins Creek by reason of a bridge and extending thence to the new railroad station, by depositing broken stone thereon on said portion of highway; said rock to be deposited upon the present highway at its present grade and to be rolled so as to form a compact surface.”

The complainants are not satisfied with this proposal, but notwithstanding, I recommend that, upon the railroad's complying with its promises herein set forth as made to the Examiner, the complaint be dismissed.

ORDER.

This matter being before The Public Service Commission of the Commonwealth of Pennsylvania upon complaint and answer on file, and having been duly heard and submitted by the parties, and due investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings of fact and conclusions thereon, which said report is hereby approved and made a part hereof:

NOW, to-wit, September 25th, 1917, the Delaware, Lackawanna and Western Railroad Company in eliminating the switch located at Kingsley, Susquehanna County,

IS ORDERED:

First: To eliminate the steep grade near the old line as soon as the railroad tracks formerly used by the railroad have been removed, by making the grade between the easterly and westerly right of way

lines uniform, meeting the highway at the right of way lines at the present grade thereof.

Second: To surface the portion of the road extending between the old station and the new station, to-wit: from a point where the said highway crosses Martins Creek by a means of a bridge and extending thence to the new railroad station, by depositing broken stone thereon on said portion of highway; said rock to be deposited upon the present highway at its present grade and to be rolled so as to form a compact surface.

And IT IS FURTHER ORDERED: That upon compliance with this order, the complaint in this case be, and the same hereby is, dismissed.

COMPLAINT DOCKET NO. 1502.

B. R. TERRY

vs.

TERRYTOWN TELEPHONE COMPANY, LIMITED.

The status or rights of one alleging he is a stockholder in a public utility are not for the Commission to determine. The Commission is authorized to supervise and regulate public service companies—particularly as to the service and rates.

APPEARANCES:

C. E. Mills, Representing the Complainant.

C. M. Culver, W. P. Wilson, Representing the Respondent.

OPINION.

ALCORN, *Commissioner*:

The complainant alleging that he is the owner of one share of the capital stock of the respondent company claims that under the regulations and by-laws of the said company he is entitled to a service