

DECISIONS OF

The Public Service Commission

OF THE

COMMONWEALTH OF PENNSYLVANIA

July 7, 1924, to June 1, 1926

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are sufficient, it seems to us, to make out a prima facie case for defendant, which complainant has wholly failed to meet. An award of reparation to complainant upon the ground of unreasonableness such as is sought would necessarily involve, the conclusion that the line-haul rates from and to Auburn were in each and every instance up to the limit of reasonable maximum rates, and that the addition of the relatively small switching charges of the Owasco was sufficient, in each and every case, to carry the rates over the line of maximum reasonableness by the exact amount of the switching charge. Such a conclusion is repugnant to common sense."

The record includes a list of shipments for which it is proposed to claim reparation. The fact that shipments were made to points at which complainant states competition existed to some extent substantiates respondents' showing that even under the switching situation here described complainant was able to hold a competitive market. Complainant did not complain of the increased switching charge at the time it became effective nor move to have the respondents amend the absorption arrangement. The request when made came from the Bethlehem Steel Company, who has not similarly proceeded to attempt to recover for the period here in question. The record shows generally that many shipments were made from complainant's plant on which the consignees paid the charges. Those consignees have not complained to this Commission either as parties to this proceeding or by separate complaints.

Under both aspects of this case, these complaints must be and they are hereby dismissed.

DEPARTMENT OF HIGHWAYS

vs.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, LEHIGH AND NEW ENGLAND RAILROAD COMPANY, TOWNSHIP OF LOWER MOUNT BETHEL AND COUNTY OF NORTHAMPTON—C. 1953

DEPARTMENT OF HIGHWAYS

vs.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, TOWNSHIP OF LOWER MOUNT BETHEL AND COUNTY OF NORTHAMPTON—C. 1955 and 4055

Crossings—Railroad—Abolition.

Three grade crossings were eliminated by relocation of a highway and construction of a viaduct.

The plan adopted was chosen in preference to a less expensive plan which would eliminate only two crossings.

The cost of improving the highway at its present location was considered in apportioning the cost.

John L. Shelley, Jr. for Department of Highways.

George P. Orlady for Lehigh and New England Railroad Co.

G. W. Morgan for Delaware, Lackawanna & Western R. R. Co.

Albert F. Kahn for Northampton County and property owners.

Everett Kent for Lower Mount Bethel Township.

REPORT BY THE COMMISSION, *December 15, 1925:*

State Highway Route No. 165, a part of the Primary System of Highways, known as the Lackawanna Trail, extends northwardly from the City of Easton to the Borough of Bangor, Northampton County. At a point in Lower Mount Bethel Township, six miles north of Easton, near the Alpha-Portland Cement Company's plant, this highway crosses at grade the single track of the Lehigh and New England Railroad Company, and proximate thereto the single track and six yard tracks of the Martin's Creek Branch of the Delaware, Lackawanna and Western Railroad Company, at what is known as "Martin's Creek Crossing." From this point the highway continues northwardly through the Village of Martin's Creek about seven-tenths miles, where it recrosses at grade the track of the Delaware, Lackawanna and Western Railroad Company at "Miller's Crossing."

About midway between these crossings, a township road known as the Blackwood Road extends westwardly from the State highway; this also crosses the track of the Delaware, Lackawanna and Western at what is known as "Hutchinson Crossing." The complaints aver that each of these four crossings is dangerous and should be eliminated for the safety, accommodation and convenience of the public.

The testimony shows that this State highway is an important thoroughfare, being a main artery of travel between Philadelphia, the Delaware Water Gap, and other resorts in the Pocono Mountains. The highway traffic during the summer and fall months is exceptionally heavy; the railroad traffic during these months is likewise heavy by reason of shipments of cement by the Alpha-Portland Cement Company during this season of the year. All of the evidence clearly establishes that these crossings are dangerous and that their elimination is necessary for the safety of the public.

A plan for the abolition of these crossings, submitted in evidence by the complainant (Exhibit No. 1 of the hearing of March 11, 1925), provides for the relocation of the State highway from a point about 600 feet south of the Martin's Creek crossings to a point about 500 feet north of the Miller Crossing,—being about 4,200 lineal feet—and for the construction of a concrete viaduct consisting of six 45-foot spans carrying the township road over the tracks of the Delaware, Lackawanna and Western Railroad Company, over Martin's Creek, at a point approximately 200 feet south of Hutchinson Crossing, and connecting with the relocated State highway. This bridge provides a vertical clearance of 22 feet over the tracks and a clear roadway of 24 feet. Under this scheme the Martin's Creek crossings, the Miller Crossing and the Hutchinson Crossing will be abolished, and the existing bridge over Martin's Creek rendered no longer necessary for public use.

The estimated cost of the improvement in accordance with this plan, as first submitted by the complainant, approximates \$149,500. This sum includes \$85,000 for the Blackwood Road viaduct and approaches thereto based on a 90-foot span. Subsequently the complainant submitted a revised estimate which approximates \$141,500, and which treats the Blackwood Road viaduct as a six 45-foot span structure, estimated to cost approximately \$77,000. The Delaware, Lackawanna and Western Railroad Company's estimate of the cost of this viaduct and approaches for the township road approximates \$100,000. None of these estimates includes any sum for property damages. The Commission has carefully analyzed these various estimates of the construction cost and determines that the sum of \$148,600 represents a fair figure for the cost of the improvement in accordance with this plan, exclusive of property damages. The estimate of damages for property taken, injured or destroyed in accordance with this plan approximates \$3,325.

An alternate plan (County's Exhibit No. 1 of May 27, 1925), was also offered in evidence. This provides for the abolition of the Martin's Creek crossings over the tracks of both railroads by the construction of a viaduct approximately 400 feet in length, with a 22-foot clearance above top of rail, and a clear roadway of 24 feet in width. This viaduct would carry the State highway over the tracks of the utilities at the locations of the existing grade crossings, and would consist of a 100-foot span through truss bridge with concrete approaches. The State highway would be relocated for a distance of approximately 1,500 feet, south of the crossings. By this scheme, the Martin's Creek crossings over the seven tracks of the Delaware, Lackawanna and Western Railroad Company and over the one track of the Lehigh and New England Railroad Company, would be abolished, but the Miller crossing on the State highway and the Hutchinson

crossing on the township road would not be eliminated. The estimated cost of the improvement, in accordance with this plan, approximates \$100,000, exclusive of paving on the approaches and property damages, of which latter there is no estimate.

After a careful consideration of the several plans submitted, the Commission finds and determines that the plan of the Department of Highways (Exhibit No. 1 of the hearing of March 11, 1925), presents the best method of abolishing the crossings complained against. Especially is this so, as the plan submitted by the County does not effectuate the abolition of all of the crossings involved. In the judgment of the Commission, the adoption of the first plan will undoubtedly be in the interest of and for the greater safety of the traveling public. This plan will, therefore, be adopted by the Commission for the improvement. As stated, the estimated cost approximates \$151,925, of which \$148,600 represents construction costs, and \$3,325 property damages. It will be necessary to appropriate certain properties for the improvement.

The testimony shows that to improve the State highway as presently located and without eliminating the existing grade crossings thereon would cost \$40,000, and this will be given due consideration in the allocation of the expense.

From a consideration of the record, the Commission finds and determines:

1. That the crossings complained of are dangerous and their elimination necessary for the safety, accommodation and convenience of the public; the complaints are therefore sustained.

2. That the elimination be made in accordance with the general plan prepared by the Department of Highways, "Complainant's Exhibit No. 1," of the hearing of March 11, 1925, which said plan is hereby approved, attached hereto and made part hereof.

3. That the Delaware, Lackawanna and Western Railroad Company submit to this Commission for approval and to the parties of record for examination, within 60 days from date of service hereof, detailed plans for that portion of the work herein ordered to be done by said railroad company.

4. That all property necessary for the improvement, together with all buildings and structures thereon, will be taken and appropriated for the purpose of the improvement and detailed descriptions thereof, with the name and address of the reputed owner, will be recited at length in the order attached to and made part of this report.

5. That the Delaware, Lackawanna and Western Railroad Company shall furnish all materials and do all work necessary to construct the six 45-foot span bridge, except road paving thereon, carrying the township road over its tracks and over Martin's Creek, and do all work necessary to relocate its freight station and the driveway thereto; this work estimated to cost \$51,450.

6. That in addition thereto, the Delaware, Lackawanna and Western Railroad Company shall pay any money to which it may

be entitled as compensation for damages to any of its property, taken, injured or destroyed by reason of this improvement.

7. That the Lehigh and New England Railroad Company shall furnish all materials and do all work necessary to relocate its track in accordance with the approved plan, the estimated cost of which is \$3,450.

8. That in addition thereto, the Lehigh and New England Railroad Company shall pay any money to which it may be entitled as compensation for damages to any of its property taken, injured or destroyed by reason of this improvement.

9. That the Department of Highways of the Commonwealth of Pennsylvania shall furnish all material and do all work necessary for the reconstruction and relocation of the State highway, including the necessary drainage facilities, and concrete paving thereon, estimated to cost \$60,350.

10. That in addition thereto, the Department of Highways of the Commonwealth of Pennsylvania shall furnish all materials and do all work necessary to construct the earth fill approaches to the viaduct, as shown on the plan, including paving on the bridge and approaches, and the guardrail fences, in accordance with the approved plan, the estimated cost of which is \$33,350.

11. That the work of relocating the track of the Lehigh and New England Railroad Company and the construction of the viaduct shall be completed by the respective parties on or before June 1, 1926; the remaining portion of the work shall be fully completed by the respective parties on or before December 31, 1926.

12. That the Lehigh and New England Railroad Company shall pay to the Department of Highways, when and as certified by The Public Service Commission, the sum of Seven thousand dollars (\$7,000), to apply on the cost of the work to be done and materials to be furnished by said Department.

13. That the County of Northampton shall pay to the Department of Highways, when and as certified by The Public Service Commission, the sum of Ten thousand dollars (\$10,000) to apply on the cost of the work to be done and materials to be furnished by said department.

14. That in addition thereto, the County of Northampton shall pay all damages due to the owners of adjacent property taken, injured or destroyed by the improvement.

15. That upon completion of the work, the Delaware, Lackawanna and Western Railroad Company shall maintain the bridge, exclusive of the paving; the Department of Highways of the Commonwealth of Pennsylvania shall maintain the relocated State highway; the Township of Lower Mount Bethel shall maintain the earth approaches to the bridge and the paving on the approaches and on the bridge.

16. That upon completion of the improvement, the Martin's Creek crossings shall be closed and effectively barricaded to public travel by the Delaware, Lackawanna and Western Railroad Company, east of its tracks and south of the track of the Lehigh and New England Railroad Company, and that that portion of the

present highway from its junction with the relocated highway at or about Highway Station No. 304 to the east end of the county bridge over Martin's Creek be vacated.

17. That upon completion of the improvement, the Miller and Hutchinson crossings shall be closed and effectively barricaded to public travel by the Delaware, Lackawanna and Western Railroad Company.

BOROUGH OF CASTLE SHANNON
vs.
PITTSBURGH RAILWAYS COMPANY

COMPLAINT DOCKET No. 6540

Crossings—Railways—Borough streets—Construction at grade.

A borough was permitted to construct a crossing of a street at grade over interurban railway tracks, upon condition that certain obstructions to vision be removed, and that railway cars slow down before crossing.

S. A. Schreiner for Complainants.

P. H. McCance for Pittsburgh Railways Company.

Walter W. Riehl for various protestants.

REPORT BY THE COMMISSION, *February 2, 1926:*

This is a proceeding instituted by the Borough of Castle Shannon under the provisions of Article III, Section 5, and Article V, Section 12, of the Public Service Company Law for the construction of a crossing at grade over and across the tracks and right of way of the Pittsburgh and Castle Shannon Railroad Company, leased and operated by the Pittsburgh Railways Company at a point where a public highway of the said borough known as Poplar Avenue as extended by ordinance of the borough enacted October 14, 1924, will cross the tracks and right of way of the aforesaid railroad company. The answer on part of the Pittsburgh Railways Company, although not specifically granting consent, does not object to the construction of the proposed