

DECISIONS OF

# The Public Service Commission

OF THE

## COMMONWEALTH OF PENNSYLVANIA

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January 3, 1928, to August 30, 1929

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VOLUME 9



HARRISBURG, PENNSYLVANIA

1929

FREAS et al.

vs.

ERIE & WYOMING VALLEY RAILROAD COMPANY, ERIE  
RAILROAD COMPANY, LESSEE

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COMPLAINT DOCKET NOS. 7503 AND 7505

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*Railroad—Sidings—Removal—Switch connections.*

Upon evidence that the siding leading over the property of a third person to that of complainants had been severed by respondent railroad company, the Commission refused to order respondent to replace the tracks removed from the adjacent property, but directed it to replace its switch connections to the siding when it should be rebuilt by complainants as far as respondent's right-of-way line.

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*Edward J. Kelly and Jessup, Gunster and Mackie, by M. D. Mackie,*  
for Complainants.

*Grover R. James and W. L. Hill* for Respondents.

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REPORT BY THE COMMISSION, *May 1, 1928:*

The complainants in these proceedings are the owners of adjoining properties fronting on Blakely Street, Dunmore, Lackawanna County, adjacent to the tracks of the Erie & Wyoming Valley Railroad Company, operated by the Erie Railroad Company, lessee, which have for a number of years been connected with the railroad by means of a siding. The gravamen of the complaints is that the respondent severed the switch connection where it connected with respondent's main track so as to deprive them of the use of the siding. The siding track involved, on leaving the railroad right of way, passes for a distance of about 75 feet over the property of the Pennsylvania Coal Company and thence crosses a public alley into the property of complainants, Sullivan and Freas, respectively, the total length of the railroad right of way being about 165 feet. The record obtained at hearing shows without denial that the siding has been used continuously by the complainants, or their predecessors in title, since 1893. The date and circumstances of its construction prior to that time are not known to the complainants.

Complainant Freas, testified that all repairs made to this siding track have been made by the respondent at the cost of the property owners, and that in 1916 the siding was relaid with heavier rails and on a new alignment in order to permit the operation of larger cars and engines

over it, and that the entire cost of the materials and work, less the salvage value of materials removed, was paid for by him and the owner of the property now owned by John J. Sullivan. While the siding has always extended across the property of the Pennsylvania Coal Company, it appears from complainants' testimony that no objection has ever been made by it, and this is not denied by respondent although it is averred in its answer that the track was removed pursuant to directions of the owner of the land upon which said track was located.

The record shows that on the properties affected the complainant Freas is engaged in the flour, feed, grain and hay business, and that complainant Sullivan has recently constructed coal pockets in order to do business as a retail dealer in coal. There is no evidence that the operation of this siding or switch connection for complainants in any way interferes with other operations of respondent railroad, or that the service in connection with the switch is other than it always has been.

Upon all the facts of record, the Commission finds and determines that respondent's action in severing the switch connection as alleged, and in removing the rails, ties, etc., is unjust and unreasonable. However, even assuming that complainants have a right of way over the coal company's property, this Commission has no authority to require respondent to enter upon property off of its right of way to replace track which it may have already removed with or without legal right: *Erie & Wyoming Valley Railroad Company et al. vs. Public Service Commission*, 74 Pa. Superior Ct. 338.

Nor does Article V, Section 5 of the Public Service Company Law authorize an award of damages for an act such as has occurred here, but whatever redress complainants may have against respondent for this interference with their railroad connection must be obtained in some other forum. In our opinion, however, we do have jurisdiction to require respondent to maintain a switch connection to a siding track provided by a prospective shipper, if under all the circumstances such a requirement is reasonable. Respondent will therefore, be required, in so far as the same has been removed, to replace and maintain in a condition fit for use its switch connection with the siding leading to complainants' property, as far as the boundary of its right of way, when the complainants shall have constructed or reconstructed the siding to a reasonable point on respondent's right-of-way line.

An order will issue in accordance with these findings.

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