

DECISIONS OF

Pennsylvania Public Utility Commission

VOLUME 18



HARRISBURG, PENNSYLVANIA
1938

DEPARTMENT OF HIGHWAYS

*v.*THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY, et al.

COMPLAINT DOCKET No. 10756

Crossings—Division of costs.

Where the Commission is convinced that the terms of an agreement allocating damages among parties in interest is fair, just and reasonable, it will uphold provisions of the same.

Forrest Mercer for the Department of Highways.

F. J. Murvine for the Borough of Mt. Pocono.

G. W. Morgan for the Delaware, Lackawanna and Western R. R. Co.

Ira A. LaBar for property owners.

Asher Seip for himself.

REPORT AND ORDER BY THE COMMISSION, *April 5, 1938:*

This matter comes before us upon petition of the Commissioners of Monroe County, dated December 2, 1937, seeking a rehearing on the question of the allocation of land damages and a modification of the order of the Commission, dated April 20, 1936, for the purpose of more equitably allocating the property damages resulting from the improvement required to be made by the order.

The Commission, by its report and order in this proceeding, dated April 20, 1936, sustained the complaint alleging dangerous conditions of a crossing, at grade, where State Highway Route No. 168, crossed three main tracks of The Delaware, Lackawanna and Western Railroad Company, at a point in the Borough of Mount Pocono, Monroe County, about 75 feet east of Mount Pocono Station of said railroad and directed the abolition of the crossing by the relocation of the highway, the relocation of the tracks of the railroad company and the construction of a bridge to carry the tracks, as relocated, over the grade of the highway, as relocated, in accordance with the general plan of the improvement prepared by the Department of Highways and submitted at the hearing of November 7, 1935, as complainant's exhibits

Nos. 5 and 6. The improvement, in accordance with the approved plan, was estimated to cost \$325,840.70, exclusive of property damages, which were estimated at \$36,800.

The parties of record offered no objection to the plan of the proposed improvement. The Department of Highways agreed to assume the construction cost of the improvement, exclusive of the cost of any materials required in the relocation of the railroad tracks and other facilities of the railroad company. The Federal Government appropriated funds to the Department of Highways to pay the portion of the construction cost the department agreed to assume.

The County of Monroe was ordered to pay all compensation for damages due to the owners, exclusive of The Delaware, Lackawanna and Western Railroad Company, for any property taken, injured or destroyed by reason of the improvement.

The Borough of Mount Pocono was ordered to pay the County of Monroe \$5000 to apply on the damages required to be paid by the county. The Department of Highways and The Delaware, Lackawanna and Western Railroad Company were each ordered to pay the county one-third of the total amount of the property damages in excess of \$5000 paid by the county in accordance with the order.

The instant petition of the Commissioners of Monroe County, dated December 2, 1937, sets forth that a suitable plan for the elimination of the grade crossing prepared by the railroad company was satisfactory to the petitioner, and that if said plan had been adopted the damages would not have exceeded \$5000; that the Department of Highways objected to the proposed plan of the railroad company, and subsequently submitted plans providing for the relocation of the state highway, the relocation of the railroad tracks and the construction of a highway underpass. In the petition it is stated that the county reluctantly accepted the plan prepared by the Department of Highways and in so doing failed to realize the extent of the damages resulting therefrom; that in the acceptance of the Department of Highways' plan, the county was influenced by the estimate of damages furnished by the real estate appraiser of the Department of Highways; that the amount of this appraisal is far below the amount of actual damages resulting from the improvement; that damages already paid and agreed to be paid amount to \$51,892; and that additional claims for damages amount to approximately \$50,000.

Copies of the instant petition were served upon each of the principal parties of record. The Department of Highways, which submitted the only answer to the petition, avers that the estimate of property damages, totaling \$36,800 and submitted at the hearing, was made by an independent appraiser acquainted with the real estate values in the vicinity of the improvement and was accepted by all parties concerned in advance of the hearing. In its answer, the Department of Highways further avers that a sketch plan of a proposed improvement, shown to one of its representatives, was rejected as a desirable method of eliminating the crossing, but denies that the adoption of the sketch plan would have resulted in property damages, not in excess of \$5000, and denies that the Department of Highways' plan, adopted by the Commission, created a cul-de-sac, and admits that certain through traffic is diverted by its adoption. It is admitted that the improvement in accordance with the plan adopted by the Commission probably involves greater property damages than an improvement in accordance with any other plan discussed at the engineering conference with the interested parties prior to the hearing, and that, therefore, the department agreed to participate in the payment of the resulting property damages.

The record shows that certain individuals appeared at the hearing and opposed the adoption of the plan of the Department of Highways, but the County of Monroe offered no objection to the estimate of property damages or to the approved plan; that the resulting property damages, as allocated by the Commission order, is in accordance with an agreement of all parties concerned as stipulated at the hearing; and that no appeal was taken from the order issued April 20, 1936, allocating the damages.

The instant petition does not definitely state the total amount actually paid by the county as compensation for damages in accordance with the order. It is stated, however, that the total of the damages paid, the damages agreed to be paid and the damages being claimed, approximate \$101,892. However, the total amount of the property damages resulting from the improvement required to be made in accordance with the order of April 20, 1936, is, at the present time, indeterminate. In any event the Borough of Mount Pocono is required to pay the fixed sum of \$5000, and the county bears one-third of the balance of the sum paid for property damages, the remaining two-thirds being paid by the Department of Highways and The Delaware, Lackawanna and Western Railroad Company.

The matters and things involved having been fully considered, we are of the opinion that the report and order issued April 20, 1936, in this proceeding equitably allocates the property damages resulting from the improvement required to be made by the order; THEREFORE,

NOW, to wit, April 5, 1938, IT IS ORDERED: That the prayer of the petition of the County of Monroe, dated December 2, 1937, be and is hereby denied.

HERBERT JOHNSON

v.

READING COMPANY, et al.

COMPLAINT DOCKET No. 8858

Crossings—Award of damages.

Commission refused additional damages, where it was shown that the damage to be recompensed was done not to property of applicant, but to that of one of the co-respondents.

Samuel K. White for the complainant.

H. Merle Mulloy, Frank M. Hunter, W. Russell Green, Forrest Mercer and *R. G. Wilcox* for the respondents.

S. H. High, Ambler Williams, Harry Polish, Edward F. Kane and *Thomas A. Foulke* for the property owners.

SUPPLEMENTAL REPORT AND ORDER BY THE COMMISSION, *April 5, 1938:*

This matter comes before us upon the petition of the Commissioners of Montgomery County, dated December 29, 1937, seeking a determination that H. Benton Leedom is entitled to the sum of \$1000 in addition to the sum of \$4503 awarded to him by our supplemental report and order of June 29, 1937, as compensation for damages for property taken, injured or destroyed by the improvement required to be made by the Commission report and order issued May 18, 1936, in this proceeding and the supplements and amendments thereto, and seeking further an authorization for the county to construct a driveway on the property of Mr.