

DECISIONS OF

Pennsylvania Public Utility Commission

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within its terms. *Piedmont & Northern Ry. Co. v. Interstate Commerce Commission*, 286 U. S. 299, 311, 52 S. Ct. 541, 545, 76 L. Ed. 1115. To limit the meaning to mere physical operation would be to eliminate 'bona fide.' That would be contrary to the rule that all words of a statute are to be taken into account and given effect if that can be done consistently with the plainly disclosed legislative intent. *Ginsberg & Sons v. Popkin*, 285 U. S. 204, 208, 52 S. Ct. 322, 323, 76 L. Ed. 704; *Ex parte Public Bank*, 278 U. S. 101, 104, 49 S. Ct. 43, 44, 73, L. Ed. 202. There is nothing to justify rejection of these qualifying words. The expression, 'in bona fide operation,' suggests absence of evasion, excludes the idea that mere ability to serve as a common carrier is enough, includes actual rather than potential or simulated service, and in context implies recognition of the power of the State to withhold or condition the use of its highways in the business of transportation for hire."

The Public Utility Law in Section 804 (a), besides requiring proof of operation, requires that the applicant must have rendered service as a bona fide contract carrier by motor vehicle. The applicants failed in this proof. From the evidence we could not find that these applicants were rendering service as a bona fide contract carrier on the effective date of the Public Utility Law, and therefore entered our order refusing the application.

CITY OF SCRANTON

v.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, THE SCRANTON TRANSIT COMPANY, THE SCRANTON ELECTRIC COMPANY AND COUNTY OF LACKAWANNA

COMPLAINT DOCKET No. 12641

Crossings—Apportionment—Maintenance—Jurisdiction.

The Commission ordered the repair of a viaduct over the tracks of a railroad in the City of Scranton as being necessary to the convenience, accommodation and safety of the public. A trolley line was operated across the viaduct by the Scranton Transit Company. The city, railroad and transit company all denied any responsibility as to the repairs or maintenance of the viaduct.

In ordering the reconstruction of the crossing, the Commission not only apportioned the expenses involved equitably but apportioned the expense for future maintenance of the improvement among the city, railroad and transit company.

Jerome I. Myers and *Alexander S. Gorny* for the Complainant.

G. W. Morgan for The Delaware, Lackawanna & Western Railroad Co., and The Scranton Transit Co.

Philip V. Mattes for the County of Lackawanna.

W. L. Hill for The Scranton Electric Co.

ORDER

BY THE COMMISSION, April 17, 1939:

Near Eighth Street in the 14th Ward of the City of Scranton, West Lackawanna Avenue is carried over the grade of the two main tracks and six siding tracks of The Delaware, Lackawanna and Western Railroad Company by means of a steel and reinforced concrete viaduct approximately 150 feet in length. The instant complaint alleges that the viaduct has been weakened by corrosion and deterioration of certain girders caused by fumes or gases emitted from the railroad company's locomotives; that the viaduct is inadequate and unsafe for the operation of heavy highway vehicles; that certain repairs, strengthening or alterations are necessary to restore it to an adequate and safe condition for public highway purposes. The responsibility of the repair and maintenance of the viaduct is denied by the complainant and the respondents.

The record shows that the viaduct consists of five I-beam spans varying in length from 14 to 35 feet, supported at the easterly and westerly ends of the bridge by concrete abutments, and at four intermediate points by steel bents carried on concrete pedestals or foundations. The easterly highway approach, which ascends in a westerly direction towards the viaduct on a 7% grade, consists of a concrete and asphalt surfaced earth embankment retained by concrete retaining walls, constructed along each side of and parallel to West Lackawanna Avenue. The westerly highway approach is of the same type of construction and is constructed on a 0.5% grade descending westwardly from the structure. The viaduct provides an asphalt and brick surfaced vehicular roadway, 40 feet in width between curbs, and two asphalt surfaced concrete sidewalks each 10 feet in width.

The Scranton Transit Company maintains and operates two street railway tracks on the viaduct, and The Scranton Electric Company maintains a number of vitrified clay conduits within the concrete sidewalk along the northerly side of the viaduct.

The structure sustains a very heavy volume of vehicular and pedestrian traffic in addition to the street railway traffic. West

Lackawanna Avenue, which is carried by the structure, is the principal street, connecting the center business section of the City of Scranton with that section of the city which is commonly known as West Scranton or Hyde Park, and has a population at the present time of approximately 40,000 persons.

The testimony shows that the viaduct was constructed in 1903 and 1904 by the City of Scranton for the purpose of eliminating the then existing dangerous crossing of the tracks of The Delaware, Lackawanna and Western Railroad Company at grade, across West Lackawanna Avenue, and in accordance with an ordinance, dated September 27, 1900, approved by the Mayor of the City of Scranton, November 17, 1900, and a proposition dated August 24, 1900, of The Delaware, Lackawanna and Western Railroad Company and Scranton Railway Company, predecessor of The Scranton Transit Company.

It appears that the viaduct was constructed under the terms of and in accordance with the written proposition of The Delaware, Lackawanna and Western Railroad Company and Scranton Railway Company, which provides, inter alia, that the City of Scranton contract for and build the viaduct from Seventh Street to Ninth Street over The Delaware, Lackawanna and Western Railroad Company tracks in accordance with the general plans agreed to by the interested parties; that the City of Scranton pay all costs for land and land damages resulting from the construction; that the viaduct be and remain the property of the city; and that the total cost of constructing the foundations and superstructure of the viaduct be paid by The Delaware, Lackawanna and Western Railroad Company and Scranton Railway Company.

The testimony shows that, as a result of the corrosive effect of fumes and gases emitted by the railroad company's locomotives, the viaduct has been weakened by the reduction of the original metal section of certain structural members and that certain repairs, strengthening or alterations are necessary to restore the viaduct to a proper and safe condition for public highway purposes.

Detail plans of the proposed repairs, strengthening or alterations of the viaduct prepared by the City of Scranton and submitted as complainant's Exhibit No. 1 provide, inter alia, for the strengthening of certain roadway stringers by welding adequate steel plates to the bottom flanges of said stringers, for the complete renewal of one roadway stringer and five fascia girders, for the renewal of certain diagonal struts and the reinforcement of the cantilever sidewalk bracket on one intermediate supporting steel bent, for the removal and replacement of the concrete sidewalk slab in certain spans, for the replacement of two steel stairways, for the repair of

approximately 800 feet and the construction of 25 feet of new hand-railing, and for the installation of suitable wrought iron blast plates to protect the roadway and sidewalk stringers immediately over the main tracks of the railroad company. A witness of The Delaware, Lackawanna and Western Railroad Company testified that the said railroad company agrees to the proposed method of repairing and strengthening the existing viaduct in accordance with the detailed plans prepared and submitted in evidence by the City of Scranton. The cost of the proposed repairs, strengthening or alterations of the viaduct in accordance with said plans is estimated by the City of Scranton at \$14,000.

The testimony shows that The Delaware, Lackawanna and Western Railroad Company, although denying any responsibility for the maintenance and reconstruction of the viaduct, has agreed to contribute the sum of \$4,000 toward the cost of completing the proposed repairs; that The Scranton Transit Company also denies any responsibility for the maintenance and reconstruction of said viaduct, but has agreed to contribute a sum of \$1,800 toward the cost of effecting said repairs; and that the City of Scranton has agreed to assume the remainder of the cost of completing the repairs, strengthening or alterations in accordance with the plan submitted of record as complainant's Exhibit No. 1.

The proposed improvement will necessitate minor alterations in the facilities of The Scranton Electric Company, which has agreed of record to furnish all material and do all work, at its sole cost and expense, necessary to effect such alterations.

The testimony shows that it will not be necessary in the instant proceeding for the Commission to appropriate any private property for the improvement or to allocate any resulting property damages.

Upon full consideration of the matters and things involved, we find and determine that the viaduct which carries West Lackawanna Avenue over the grade of the two main tracks and six siding tracks of The Delaware, Lackawanna and Western Railroad Company, near Eighth Street, in the 14th Ward of the City of Scranton, is inadequate and unsafe for highway purposes and that its repair, strengthening or alteration in accordance with the plans submitted by the City of Scranton at the hearing of February 28, 1939, as complainant's Exhibit No. 1, is necessary and proper for the service, accommodation, convenience or safety of the public; **THEREFORE,**

NOW, to wit, April 17, 1939, IT IS ORDERED: That the complaint be and is hereby sustained.

IT IS FURTHER ORDERED: That the viaduct which carries West Lackawanna Avenue over the grade of the two main tracks and six siding tracks of The Delaware, Lackawanna and Western Railroad Company, near Eighth Street, in the 14th Ward of the City of Scranton, be repaired, strengthened or altered in accordance with the plans submitted by the City of Scranton at the hearing of February 28, 1939, as complainant's Exhibit No. 1, which said plans are hereby approved, attached hereto and made part hereof.

IT IS FURTHER ORDERED: That the City of Scranton, at its sole cost and expense, furnish all material and do all work necessary to complete the improvement in accordance with the approved plans; said work and materials being estimated to cost \$14,000.

IT IS FURTHER ORDERED: That all work necessary to complete the improvement herein ordered be done in a manner satisfactory to the Commission and be fully completed on or before August 31, 1939.

IT IS FURTHER ORDERED: That any relocation of, changes in, or removal of any adjacent structures, equipment or other facilities of any public utility located within the limits of any highway, which may be required as incidental to the execution of this improvement, be made by said public utility, at its sole cost and expense, and in such a manner as will not interfere with the construction of the improvement.

IT IS FURTHER ORDERED: That any relocation of, changes in, or removal of any adjacent structures, equipment or other facilities of any public utility located beyond the limits of any highway, which may be required as incidental to the execution of this improvement, be made by said public utility in such a manner as will not interfere with the construction of the improvement.

IT IS FURTHER ORDERED: That the City of Scranton cooperate with The Delaware, Lackawanna and Western Railroad Company, so that in the performance of the work of repairing, strengthening or altering the spans of the portion of the viaduct extending across the tracks and right of way of said railroad company, the operation of the railroad company's facilities will not be endangered or unnecessarily impeded.

IT IS FURTHER ORDERED: That, during the time the spans of the viaduct which extend across its tracks and right of way are being repaired, strengthened or altered in accordance with this order, The Delaware, Lackawanna and Western Railroad Company

cooperate with the City of Scranton and operate its trains in the vicinity of the improvement in a safe manner, at reduced speed and under control and, in addition thereto, at its sole cost and expense, furnish any watchmen or flagmen necessary to protect its train operation.

IT IS FURTHER ORDERED: That the City of Scranton cooperate with The Scranton Transit Company, so that, in the performance of the work herein ordered, the operation of the transit company's facilities will not be endangered or unnecessarily impeded.

IT IS FURTHER ORDERED: That, during the time the repairs, strengthening or alterations of the viaduct are being made in accordance with this order, The Scranton Transit Company cooperate with the City of Scranton by operating its street railway facilities across the viaduct in such manner as will not interfere with the construction of the improvement and, in addition thereto, at its sole cost and expense, furnish any watchmen or flagmen necessary to protect its trolley operation.

IT IS FURTHER ORDERED: That The Delaware, Lackawanna and Western Railroad Company, having agreed so to do, pay the City of Scranton, when and as certified by the Pennsylvania Public Utility Commission, the sum of four thousand dollars (\$4,000).

IT IS FURTHER ORDERED: That The Scranton Transit Company, having agreed so to do, pay the City of Scranton, when and as certified by the Pennsylvania Public Utility Commission, the sum of eighteen hundred dollars (\$1,800).

IT IS FURTHER ORDERED: That The Delaware, Lackawanna and Western Railroad Company, The Scranton Transit Company and The Scranton Electric Company pay any money to which they severally may be entitled as compensation for damages for any of their respective property taken, injured or destroyed by reason of the improvement.

IT IS FURTHER ORDERED: That the City of Scranton pay all compensation for damages, if any, due to the owners, exclusive of The Delaware, Lackawanna and Western Railroad Company, The Scranton Transit Company and The Scranton Electric Company, for property taken, injured or destroyed by reason of the improvement herein ordered.

IT IS FURTHER ORDERED: That, upon completion of the improvement herein ordered, and its opening to public use, the City

of Scranton thereafter maintain the substructure and superstructure of the viaduct and the highway approaches thereto, exclusive of that portion of the roadway pavement on the superstructure and the approaches located between the rails, between the tracks and for a distance of at least 24 inches beyond the outer rail of each track.

IT IS FURTHER ORDERED: That, upon completion of the improvement herein ordered, and its opening to public use, The Scranton Transit Company thereafter maintain its facilities and that portion of the roadway pavement on the viaduct and the highway approaches thereto, located between its rails, between its tracks and for a distance of at least 24 inches beyond the outer rail of its tracks.

IT IS FURTHER ORDERED: That, upon the rendering of bills by the City of Scranton therefor, The Delaware, Lackawanna and Western Railroad Company pay the City of Scranton a sum or sums of money equal to 30% of the actual cost of materials furnished and work done by the city in maintaining, in a proper and safe condition, that portion of the substructure and superstructure of the viaduct located on or over the tracks and right of way of said railroad company, exclusive of the cost of maintaining the sidewalk and roadway pavement on the superstructure of the viaduct.

APPLICATION OF DEPARTMENT OF HIGHWAYS OF THE COMMONWEALTH OF PENNSYLVANIA

APPLICATION DOCKET No. 34647

Crossings—Alteration—Expenses—Apportionment—Maintenance Facilities.

Where the alignment and grades of a highway in the vicinity of a grade crossing were irregular, the Commission approved an application for the alteration of the crossing and the widening of the highway approaches thereto as necessary to the safety of the public.

In granting its approval to the relocation of a grade crossing, the Commission apportioned the expenses incidental to the alteration and future maintenance among the railroad, Department of Highways and the County.

The Commission directed any changes in or removal of facilities of any public utility located within the limits of the highway, made necessary by the alteration to a crossing be made by said public utility at its sole expense.

Forrest Mercer for the Department of Highways.
J. T. Brady for the Reading Company.