

DECISIONS OF

**Pennsylvania Public Utility
Commission**

VOLUME 30



HARRISBURG, PENNSYLVANIA

1954

tion of Section 201 of the Public Utility Law, Act of May 28, 1937, P. L. 1053, as amended; THEREFORE,

IT IS ORDERED:

1. That the complaint of Matilda W. Harvey and James H. Harvey, trading as Harvey's Local Express and O. K. Heilman v. Lightning Local Express Company at C. 15197 in regard to the transportation of property from Pittsburgh to Creighton, Brackenridge, Blawnox, Natrona Heights and Natrona be and is hereby sustained.

2. That the respondent, Lightning Local Express Company, forthwith cease and desist from the transportation of property from Pittsburgh to Creighton, Blawnox, Brackenridge, Natrona Heights and Natrona, and from any other transportation not authorized by its certificates of public convenience.

3. That the complaint, insofar as it pertains to transportation from Pittsburgh to Dixmont and Neville Island and from McKees Rocks to Creighton, be and is hereby dismissed.

APPLICATION OF LACKAWANNA AND WYOMING VALLEY
RAILROAD COMPANY (E. McLain Watters, Trustee)

APPLICATION DOCKET No. 78602

Railroad Companies—Passenger Train Service—Service Discontinuance—Employees' Protective Conditions—Commission Jurisdiction—Orders—Federal Decisions—Interstate Commerce Act—Burlington Formula.

Refusing protestants' contention that the Commission had jurisdiction to attach to its order authorizing abandonment of passenger train service certain employees' protective conditions similar to those provided in the Burlington Formula followed in the case of *United States v. Lowden*, 308 U. S. 225 (1939), the Commission stated that the federal court decision interpreted certain provisions of the Interstate Commerce Act and related acts, and consequently, did not apply to the Public Utility Law under which the Pennsylvania Commission functioned.

E. M. Watters, Jr. and Norman Harris for Lackawanna and Wyoming Valley Railroad Company.

James W. McNulty, John J. Scott and John M. Gronfine for City of Scranton.

Howard E. Kennedy for City of Wilkes-Barre.

Maurice H. Kirshner for Township of Plains.

J. Earl Langan for City of Pittston and Township of Jenkins.

William F. Farrell and John R. Reap, Jr. for Owners of Rocky Glen Park, et al.

Ralph P. Needle and Edward J. Hickey, Jr. for Brotherhood of Maintenance of Way Employees, et al.

Jerome P. Casey for Brotherhood of Railroad Trainmen.

Walter W. Kohler for Laurel Line Transportation Company.

BY THE COMMISSION, *November 6, 1952*:

Lackawanna and Wyoming Valley Railroad Company provides passenger train service between the cities of Scranton, Lackawanna County and Wilkes-Barre, Luzerne County, and the intermediate stations of South Scranton, Cornell Junction, Virginia, Rocky Glen, Moosic, Avoca, South Avoca, Heidelberg, Dupont, North Pittston, Pittston, South Pittston, Ewen, Inkerman, Number 14, Hilldale, North Plains, Plains, Midvale and River Street (Wilkes-Barre). Service consists of the operation of 20 hourly passenger trains with four additional afternoon trains in each direction each weekday between Scranton and Wilkes-Barre. On Sundays and holidays 12 trains in each direction are operated between Scranton and Wilkes-Barre.

Lackawanna and Wyoming Valley Railroad Company, the applicant, a Pennsylvania corporation, is presently under the jurisdiction of the United States District Court for the Middle District of Pennsylvania at No. 10,621 in Proceedings for the Reorganization of a Railroad under Section 77 of the Bankruptcy Act, as amended. The Court by decree dated July 18, 1949, appointed E. McLain Watters as Trustee to administer the properties of the corporation and the appointment was confirmed by Interstate Commerce Commission in November, 1949. Under date of March 12, 1952, the Court adopted the report of a Special Master recommending abandonment of passenger train service and directed the Trustee to obtain this Com-

mission's approval of such abandonment, and the instant application conforms to such directive.

Notice of the proposed abandonment was duly posted and in answer thereto a petition bearing the signature of 179 persons, a resolution of City Council of Wilkes-Barre and a letter from Sterling Services (Rocky Glen Park) protesting against our approval of the application were presented to the Commission and placed in the correspondence folder of the record.

At the hearing held on May 29, 1952, appearances were entered on behalf of City of Scranton, Township of Plains, City of Wilkes-Barre, Sterling Services (Rocky Glen Park), Garfield Mills, Inc., Moosic Chamber of Commerce, the local organizations of Brotherhood of Maintenance of Way Employees, Brotherhood of Railway and Steamship Clerks, American Train Dispatchers Association and International Brotherhood of Electrical Workers, Brotherhood of Railroad Trainmen, City of Pittston, Jenkins Township, and the applicant. Six witnesses testified for the applicant at this hearing. At the hearing held on June 26, 1952, one witness testified for the applicant and nine witnesses testified for the protestants.

As of September 30, 1951, Lackawanna and Wyoming Valley Railroad Company provided passenger trains between Scranton and Wilkes-Barre and intermediate stations upon the following schedule—

Weekday Service

<i>Scranton to Wilkes-Barre and Intermediate Stations</i>			<i>Wilkes-Barre to Scranton and Intermediate Stations</i>		
<i>A.M.</i>	<i>P.M.</i>	<i>P.M.</i>	<i>A.M.</i>	<i>P.M.</i>	<i>P.M.</i>
5:00	1:00	5:30	12:45	12:45b	5:45
6:00	2:00b	6:00b	5:40	1:45	6:15
7:00	2:30	7:00	6:45	2:45b	6:45b
8:00	3:00	8:00	7:45	3:15	7:45
9:00b	3:30	9:00	8:45	3:45	8:45
10:00	4:00b	10:00b	9:45b	4:15	9:45
11:00	4:30	11:00	10:45	4:45b	10:45b
12:00b	5.00	12:00	11:45	5:15	11:45

b—Carry baggage and express—subject to change.

Sunday Service

<i>A.M.</i>	<i>P.M.</i>	<i>P.M.</i>	<i>A.M.</i>	<i>P.M.</i>	<i>P.M.</i>
7:00	1:00	6:00	12:45	1:45	5:45
9:00	2:00	8:00	7:45	2:45	6:45
11:00	3:00	10:00	9:45	3:45	8:45
	4:00	12:00	11:45	4:45	10:45
	5:00				

Holiday Service

Sunday service will be operated on the following holidays:

Memorial Day, Fourth of July, Labor Day, Thanksgiving,
Christmas and New Year's Day.

The running time between Scranton and Wilkes-Barre
is 38 minutes and the distance is 19 miles.

Applicant's Exhibit No. 11 is a statement of revenue passengers carried and passenger revenue for the years 1920, 1930, 1940, 1945 to 1951, inclusive, as follows:

<i>Year</i>	<i>Total Revenue Passengers</i>	<i>Total Revenue</i>
1920	4,220,596	\$923,557.74
1930	3,108,794	532,619.31
1940	1,036,010	190,251.89
1945	2,125,701	443,501.90
1946	2,260,864	468,386.00
1947	2,041,579	426,149.44
1948	1,790,008	410,328.82
1949	1,373,386	341,648.50
1950	1,050,581	285,890.03
1951	882,618(a)	229,624.61(a)

(a) Only 18 days in December, on account of trainmen's strike.

The record discloses that there has been a constant decline in the passenger revenues and in the number of revenue passengers carried during the 6-year period January 1, 1946 to December 31, 1951; the yearly passenger revenues and revenue passengers carried by months, follows:

<i>Month</i>	<i>1946</i>	<i>1947</i>	<i>1948</i>
January	162,028	165,042	147,712
February	155,375	146,157	137,269
March	175,926	162,458	149,027
April	170,449	155,476	139,294
May	185,989	179,088	155,750
June	241,948	203,895	182,962
July	254,506	211,587	185,503
August	221,554	209,465	168,316
September	183,007	159,898	144,986
October	171,460	153,569	128,573
November	165,712	142,047	121,575
December	172,910	152,897	130,041
Total	2,260,864	2,041,579	1,791,008
Total Passenger Revenues	\$468,386	\$426,149	\$410,329

<i>Month</i>	<i>1949</i>	<i>1950</i>	<i>1951</i>
January	121,400	89,375	84,406
February	103,838	75,579	72,015
March	110,912	87,956	76,281
April	117,825	84,028	72,218
May	119,811	87,893	78,749
June	137,129	97,272	90,564
July	139,171	100,104	93,611
August	124,850	101,228	88,674
September	102,776	80,469	69,308
October	97,884	79,002	61,691
November	95,141	77,556	56,560
December	102,649	90,119	38,541*
Total	1,373,386	1,050,581	882,618*
Total Passenger Revenues	\$341,649	\$285,890	\$187,904**

* Passenger count includes only 18 days for December, 1951—"December 19 to 31, 1951, operations ceased because of strike."

** Passenger revenues for nine months only.

Applicant's Exhibit No. 3 is a blueprint showing bus routes between Scranton and Wilkes-Barre covering the area adjacent to and served by the applicant. The record discloses that seven bus companies furnish public transportation in the area involved in this application. The Laurel Line Transportation Company furnishes a weekday schedule which provides 36 trips northward Pittston to Scranton, serving intermediate stations, and three additional northward trips Pittston to Moosic; southward service Scranton to Pittston is provided by 36 trips each weekday, one of which is an express bus, and one an additional trip terminating at Dupont. Frequent service is provided on Sundays and holidays.

Pennsylvania Greyhound Lines, Inc. provides 13 trips daily and three trips, daily, except Sundays and holidays, from Scranton to Wilkes-Barre, serving Minooka, Moosic, Avoca, Dupont and Pittston, and in the opposite direction 12 trips daily and three trips, daily, except Sundays and holidays, are provided to the same communities, subject to certain local restrictions.

Wilkes-Barre Transit Corporation provides daily trolley coach service between Wilkes-Barre, Midvale and Plains station on 20-minute headways from 5 a.m. to midnight. Weekday bus service from Wilkes-Barre to Pittston is provided on 20-minute headways. In the opposite direction, the weekday schedule provides 49 trips, and on Sundays and holidays 37 trips are provided. Bus service is provided between South Pittston and Avoca by the operation of 25 trips in each direction daily.

Scranton Transit Company provides bus service in the City of Scranton and westward from the city to the Borough of Old Forge.

Yatesville Bus Company provides local service between Yatesville and Pittston.

Hughestown Bus Company operates between the Borough of Hughestown and Pittston.

Pittston Bus Company provides service in and around Pittston and westward to the Village of Inkerman.

Considerable testimony was presented on the record concerning Rocky Glen passenger station on the applicant's line located in Moosic Borough and at which station persons visiting Rocky Glen Park, an amusement park, are accommodated.

A witness for the applicant testified that Laurel Line Transportation Company has made application to the Commission to extend its bus lines to Rocky Glen Park during the summer months when the park is in operation as substitute service for the rail service of the applicant, if the rail service is discontinued.

A witness for the protestants, the manager of Rocky Glen Park, stated that the discontinuance of passenger service by the applicant would inconvenience all patrons of the park not having automobile facilities as the park is located about 1½ miles from other public transportation. This witness testified that the park is open to the public from Decoration Day to Labor Day, and that three families and one individual reside on the park grounds during the entire year.

A witness for the protestants, the applicant's freight agent at Scranton, appeared on behalf of the Brotherhood of Railway and Steamship Clerks, the International Brotherhood of Electrical Workers, Maintenance of Way Employees and American Train Dispatchers Association. The witness stated that the abandonment of the passenger service by the applicant will work a hardship upon the traveling public and upon the applicant's employees through the abolition of their positions. A conductor on the applicant's trains appeared on behalf of the Brotherhood of Railroad Trainmen and subscribed to the testimony of the previous witness.

A witness for the protestants residing in Avoca and employed in Wilkes-Barre stated that she would be inconvenienced by the discontinuance of applicant's trains by being forced to walk quite a distance to board a bus or as an alternative she could ride another bus line and eliminate the long walk, but then would be compelled to

transfer at Pittston to another bus line to get to Wilkes-Barre. Upon cross-examination, the witness testified that direct bus service is available between Avoca and Wilkes-Barre but that it was necessary that she walk five blocks to board the bus in the morning although in the afternoon the bus stops at a point about 1½ blocks from her home.

A witness for the protestants stated that he and two members of his family are employed at Rocky Glen Park and would be inconvenienced by the abandonment of passenger train service between Avoca and the park.

Three witnesses testified to the effect that bus transportation is not as convenient for them as railway trains.

A witness for protestants testified that he had analyzed some of the records of the applicant to determine the average passenger traffic carried on the various trains operated to and from Wilkes-Barre for the month of June, 1952. His analysis of the average number of passengers on the trains leaving the points of origin contains no information as to whether the passengers were carried to the first station, to an intermediate station, or to the farthest station beyond the point of origin.

The record reveals that there has been a continuous decline in passengers carried by applicant since the year 1946, when 2,260,864 revenue passengers were carried, to 1950, the last full year contained in the record, when 1,050,581 passengers were transported, a decrease of 53%. During the same period, the yearly passenger revenues declined from \$468,386 in 1946 to \$285,890.03 in 1950, a decrease of 38.96%.

The annual loss sustained by the applicant in the operation of its passenger train service amounted to \$27,990 in 1947 and continued to mount each year thereafter. In 1948 the loss amounted to \$46,869, in 1949 the loss was \$121,566, in 1950 the loss amounted to \$146,345, and in 1951 the loss amounted to \$177,681. The applicant had, at May 27, 1952, cash and current assets totaling \$33,430.38 and current liabilities, taxes and other obligations totaling \$297,072.50 or a net excess of liabilities over assets of \$263,642.12, excluding \$4,210,723.80 owing on matured funded debt and interest applicable thereto.

Protestants, Brotherhood of Railroad Trainmen, Brotherhood of Maintenance of Way Employees, Brotherhood of Railway and Steam-

ship Clerks, Freight Handlers, Express and Station Employees, International Brotherhood of Electrical Workers and American Train Dispatchers Association urge that if the Commission finds the proposed abandonment necessary or proper in the public interest "it attach to its certificate of public convenience certain employees protective conditions known as the Burlington Formula."

According to protestants, approximately 30 employees of the applicant who are members of the protestant organizations will be adversely affected if this application is approved. Applicant contends that, while this Commission can attach conditions to a certificate of public convenience authorizing abandonment, said conditions must relate to the service, accommodation, convenience or safety of the public, and that "employee relations or contracts are not within the meaning of the term service, accommodation, convenience or safety of the public." Protestants contend that we have jurisdiction to attach conditions similar to those provided in the Burlington Formula and point to the case of *United States v. Lowden*, 308 U. S. 225 (1939).

The above decision interprets certain provisions of the Interstate Commerce Act and related acts and sections thereof. The decision is not applicable to the Public Utility Law of Pennsylvania under which this Commission functions.

The record in this proceeding discloses the existence of an abundance of common carrier transportation within the 19-mile territory extending between Wilkes-Barre and Scranton, and the lack of continuing need for the services provided by this interurban rail carrier is exemplified by the decreased number of passengers riding applicant's trains and the mounting record of losses sustained in connection with applicant's passenger train service resultant in the present operation of the property under the custody of the Court.

Upon full consideration of the matters and things involved, we find and determine that the abandonment of passenger train service on the line of railway of Lackawanna and Wyoming Valley Railroad Company between Scranton, Lackawanna County and Wilkes-Barre, Luzerne County, is necessary or proper for the service, accommodation, convenience or safety of the public; **THEREFORE,**

IT IS ORDERED:

1. That the instant application be and is hereby approved.

2. That a certificate of public convenience issue evidencing our approval of the abandonment of passenger train service by Lackawanna and Wyoming Valley Railroad Company between Scranton, Lackawanna County and Wilkes-Barre, Luzerne County, subject to the following conditions:

- (a) That Lackawanna and Wyoming Valley Railroad Company, before effectuating the changes authorized herein, furnish 20 days' notice to this Commission and to the public; such notice to the public to be posted in each station served by applicant and in each car of its passenger trains.
- (b) That Lackawanna and Wyoming Valley Railroad Company, when making any tariff revisions required in connection with the abandonment authorized herein, include reference by title, date and docket number to the certificate of public convenience to issue in this proceeding.

KATHERINE LEWIS

v.

BALTIMORE AND OHIO RAILROAD COMPANY

COMPLAINT DOCKET No. 15130

Crossings—Jurisdiction—Highway—Railroad Crossing (Abolition of)—Public Crossing—Private Crossings.

In the absence of evidence showing that a roadway leading to and from an abolished railroad crossing is a public highway, the Commission is precluded through lack of jurisdiction from acting upon a complaint against a railroad company for abolishing the crossing without Commission approval.

Public Railroad Crossing—Private Railroad Crossing—Jurisdiction.

The Commission's jurisdiction is limited to public railroad crossings and does not extend to private crossings.

Public Railroad Crossing—Private Railroad Crossing—Dedication—Jurisdiction—Public User.

Although the evidence showed definite public use of a railroad crossing, the Commission refused to entertain a complaint against the railroad company for abolishing the crossing without Commission approval because there was no evidence that the roadway leading to and from the crossing had ever been legally dedicated or carried or maintained as a township road.