

DECISIONS OF

**Pennsylvania Public Utility
Commission**

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service to another message rate service. Consequently, the relief or refund requested by complainant, based on alleged unused message units, would entail preferential treatment on the part of respondent which would be contrary to the provisions of respondent's filed tariff and the prohibition set forth in Section 304 of the Public Utility Law.

It is respondent's duty and obligation to furnish full and complete information to its customers regarding the nature and limitations of the various services available in a given exchange, as well as the rates and charges applicable to such services. In this regard, this record clearly shows that respondent has taken reasonable measures to inform complainant as to the charges and message unit allotments applicable to the separate services furnished to his business establishment.

Upon full consideration of all the matters of record, the Commission is of the opinion and finds that to grant complainant's request, as set forth by the allegations of the instant complaint, would result in unreasonable and unlawful discrimination, and that the instant complaint should be dismissed; **THEREFORE,**

IT IS ORDERED: That the complaint filed by J. M. Sork against The Bell Telephone Company of Pennsylvania, docketed at C. 18143, be and is hereby dismissed.

**CO-OPERATIVE LEGISLATIVE COMMITTEE, RAILROAD
BROTHERHOODS IN THE STATE OF PENNSYLVANIA
and J. J. DILLON**

v.

**ERIE-LACKAWANNA RAILROAD COMPANY and THE
DELAWARE AND HUDSON RAILROAD CORPORATION**

COMPLAINT DOCKET No. 18293

*Public Safety—Safety of Employees—Railroad Companies—Train Movements
Locomotives at Rear—Cabin Cars—Air Brake Valves—Warning Whistles.*

Two railroad companies are directed to adopt measures necessary to insure that train movements involving the pushing of a car or cars by locomotive power on an

involved line of railroad be restricted to a maximum speed of 15 miles an hour, that such movements be stopped in advance of each crossing in order that a member of the crew provide flag protection for highway traffic so as to reduce the hazard to employees and the public, and that such movements be provided with a cabin car, properly with a permanently affixed and operative standpipe brake valves and air warning whistles on each platform of the cabin cars.

Brandon, Shearer & Flaherty by *Albert D. Brandon* for Co-operative Legislative Committee, Railroad Brotherhoods in the State of Pennsylvania and *J. J. Dillon*.

D. F. Donovan for Erie-Lackawanna Railroad Company.

John F. Reilly and *Bedford Waller, Griffith, Darling & Mitchell* by *Paul Bedford* and *E. Keene Mitchell, Jr.* for Delaware and Hudson Railroad Corporation.

BY THE COMMISSION, *September 11, 1967*:

This matter is before us upon complaint filed December 3, 1966 by Co-Operative Legislative Committee, Railroad Brotherhoods in the State of Pennsylvania and *J. J. Dillon*, an employee of Erie-Lackawanna Railroad Company (E-L) alleging that employees of Erie-Lackawanna Railroad Company are subject to unreasonably hazardous and dangerous conditions while engaged in the movement of trains, with the locomotive at rear, on main tracks of the Pennsylvania Subdivision of The Delaware and Hudson Railroad Corporation (D&H), between Starrucca and Jefferson Junction in Harmony Township, Susquehanna County.

Complainants allege that commencing in May, 1966 Erie-Lackawanna management personnel instructed E-L operating employees to perform certain train movements northbound from Starrucca to Jefferson Junction on tracks of The Delaware and Hudson Railroad Corporation, over which Erie-Lackawanna has trackage rights, with locomotive coupled behind varying numbers of freight cars, so as to involve the shoving or pushing of said cars, with a cabin car being the lead car, for a distance of about five miles. Complainants indicate that the line of railroad involved crosses, at grade, five highways, whereas the carrier's testimony and an exhibit indicate the existence of but four crossings, including one private crossing at grade, on the line of railroad involved.

Complainants seek the issuance of a Commission order which would prohibit the pushing of cars between Starrucca and Jefferson Junction.

Erie-Lackawanna, in answer to the complaint, denies that said pushing or shoving operation involves any considerable number of cars, and further denies that such movements are unreasonably hazardous or that they constitute an unreasonable danger to employees.

The D&H makes no answer to complainants' averments, points out that said averments are not directed against D&H, and requests dismissal of D&H as a respondent in the proceeding.

Hearing was held in Montrose on March 9, 1967, during which four witnesses appeared in behalf of complainants, and each respondent railroad company presented one witness. Two sketch maps depicting the line of railroad involved were submitted as exhibits by E-L.

Counsel for D&H moved for dismissal of the complaint as directed against said company on the grounds that the complaint avers no allegations of negligence or unsafe conditions attributable directly to D&H. Complainants' counsel stated that inclusion of D&H as a party respondent to the proceeding was at the direction of this Commission, and pointed out that, in the event the complaint is sustained, this Commission may find that the existing line of D&H may require a change in physical characteristics to provide relief in the matter, and consequently, it is advisable that D&H remain a party to the complaint.

The examiner overruled the D&H motion and indicated that the dismissal of any party to the proceeding is a matter beyond the examiner's authority.

A map submitted by E-L, as its Exhibit No. 1, shows that portion of the D&H extending between Carbondale and Jefferson Junction over which E-L has trackage rights, a distance of approximately 36.3 miles. A second sketch map submitted by E-L, as its Exhibit No. 2, depicts the specific five-mile portion of D&H single track main line, extending between stations identified as CF, located at D&H Mile Post 65.3, and Jefferson Junction, JN, located at D&H Mile Post 70.3, and shows the existence of four crossings, at grade, over which the pushing movement is made in a northerly direction.

Instructions for the operation involved have been furnished to conductors and enginemen, both in written and oral forms, by E-L yard-

masters, located in Scranton, and also from train dispatchers located in Mayfield or Dundoff at the direction of the division superintendent. The instructions direct the crews to push the train north from Starucca to Jefferson Junction in the event the conductor considers the alternative of "flying switch movements" or so-called "dropping by" method of switching to be an unsafe move.

The record indicates that the cars which are placed on the E-L connecting track at Jefferson Junction, upon completion of the pushing movement, are specially loaded "high and wide" gondola cars, known as "blackjack cars," which loads are generally U.S. Army containers which cannot be moved into the Scranton area due to inadequate clearances existing on the E-L Green Ridge Branch track between Carbondale and Scranton.

The grade crossings, one of which is a private farm road crossing, are as follows:

<i>Name</i>	<i>Highway Designation</i>	<i>Location</i>	<i>Protection</i>
Melrose	Township Road No. 765	Mile Post 65.9	None
Stevens Point	State Highway Route No. 296	Mile Post 67.8	Flashing light signals
Farm crossing	Private Road	Mile Post 68.2	None
Brandt	State Highway Route No. 296	Mile Post 68.9	Flashing light signals

Complainants' initial witness, E-L freight conductor Dillon, the individual complainant in the proceeding, stated that the line of railroad involved contains many curves and is situated in mountainous terrain with the prevailing grades for northbound movements being descending. The pushing movement subject to complaint occurs with varying frequency, from one to three times per week, and is subject to the operating rules of D&H.

The witness indicated that the movements, which consist of varying numbers of cars, ranging from 8 to 35 cars, are made with speeds generally reduced to 10 or 15 miles an hour. In approaching the various crossings, one member of the train crew (conductor or flagman) is stationed on the front or head end platform of the cabin car, which is located at the head of the train, and, in the event that a particular cabin car is not equipped with a permanently affixed emergency brake valve and air whistle on the platform, another crewman takes a posi-

tion inside the cabin car where he is able to manipulate the conductor's emergency brake valve, should such action be necessary. On some occasions, the cabin car provided for this crew has not been equipped with an emergency brake valve and whistle apparatus on its platform, and the crew is then obliged to secure from the terminal yard office in Scranton a portable back up air hose and whistle which is attached to the train air line at the leading end of the cabin car. This provides the crew with control of the brake system from the platform and with a warning whistle. The air whistles on cabin cars are of a reduced density of sound. The witness testified that the curvature of the track together with the length of the train served to limit or prevent entirely the passage of hand signals from cabin car to locomotive.

The maximum permissible speed authorized by D&H timetable, for the five-mile single track line involved, is 35 miles per hour.

Additional Erie-Lackawanna conductors, including the grievance committee local chairman, substantiated witness Dillon's testimony relative to the pushing movement between CF and JN, and all are of the opinion that pushing the cars over the five-mile distance is an unsafe operation.

The union representative stated that all members of the local trainmen's lodge had entered complaints with him, requesting that the matter be discussed with Erie-Lackawanna management as constituting an unreasonably dangerous condition. Discussion of the matter with the division superintendent in June 1966 developed that management desired the move be made by pushing cars ahead of the locomotive from CF to JN, should the crew not desire to drop the cars onto the track at Jefferson Junction by a flying switch move, the latter method of switching being an undesirable practice to be avoided when practicable.

D&H operating Rule No. 103 was read into the record from page 43 of the D&H book of rules by the witness, as follows: "When cars are pushed by an engine, except when shifting or making up train in yard, a trainman must take a conspicuous position on the lead car. If signals from the trainman cannot be seen from the engine, it must be stopped immediately."

Detail surrounding the assembling of the draft of high and wide cars and placing of same in the train involved, at the Carbondale Yard of D&H, and a resume of the movement north to Jefferson Junction, was supplied by the E-L road foreman of engines. This witness testi-

fied that nearly all of the cabin cars furnished for this run are equipped with permanently affixed tail pipe and warning whistle apparatus on the platforms, and that when cabin cars are not so equipped, crew members must obtain the portable back up hose for attachment to the train air line.

The special gondola cars are moved onto the E-L connecting track which extends between JN (Jefferson Junction) on the D&H, and JA on the E-L, hand brakes applied to same, and these cars are subsequently moved to Binghamton, New York, by a westbound E-L freight train.

The road foreman stated that he had issued instructions to the crews assigned to the local freight crew to the effect that the move from CF to JN be made at a slow speed, not to exceed 15 miles an hour, and expressed the opinion that the procedure of stopping the train prior to pushing over the grade crossings is a matter left to each conductor's judgement. The instructions also directed that the train be operated slower approaching the crossings.

The road foreman testified that reports of any accidents involving E-L trains which might occur on this line of railroad would normally come to his attention and indicated that he had no knowledge of any collisions, between vehicles and the reverse train movement involved, having occurred since inception of the move in May 1966. The witness expressed opinion that the movement is not unsafe or hazardous and is not in violation of any D&H operating rule.

Cross-examination of this witness developed the fact that management interpreted D&H operating Rule No. 103 contrary to employee interpretation, inasmuch as the road foreman denied that the D&H requires observance of the second paragraph of the rule, which reads, "If signals from the trainmen cannot be seen from the engine, it (the movement) must be stopped immediately." He bases this reasoning on the fact that the trainman on the lead car, generally a cabin car, has the means (brake valve control) to slow or stop the movement and stated that the rule intends that enginemen must maintain visual contact with trainmen in pushing moves only when the cars being pushed have inoperative air brakes, although no such printed instructions or rules are introduced.

The testimony of a D&H supervisory employee, assigned as a trainmaster-rules examiner, appears to be inconclusive and of little, if any, probative value.

We are confronted with a specific operational problem, brought about by the existence of inadequate clearances beneath the Linden Street, Scranton, bridge on E-L trackage. In addition, the record discloses that D&H management emphasizes that this particular pushing operation is not directed or authorized by any D&H operating rule or special operating instruction. Such move is not, however, performed by any D&H crews, which also operate trains over the same trackage.

Complainants' witnesses contend that this pushing operation is one to which D&H operating Rule No. 103 should be applied. It is the position of D&H and E-L, however, that this rule is not applicable to the operation.

E-L avers that the move is not unsafe in consideration of the following facts:

- (1) The conductor is provided with the means of slowing and/or stopping the train, if necessary.
- (2) The conductor sounds the whistle located on the cabin car and the engineman sounds the locomotive whistle (even though the engine may be 30 or more car lengths removed from a grade crossing).
- (3) The movement is made at a slow rate of speed.
- (4) The conductor is empowered by an operating rule to stop in advance of each grade crossing.

We are unable to find, as suggested by E-L, that this movement or others of a similar nature is safe solely in consideration of the ability of trainmen located on the head end of a pushing movement to slow and/or stop such movement and to sound what is at best an inadequate cabin car warning whistle.

The record reflects that the alternative method of switching the "high and wide" cars to the E-L connecting track at Jefferson Junction would necessitate swinging of these cars onto said track (flying switch movement) a type of movement which in our opinion is to be avoided if practicable.

The record indicates that, aside from a physical alteration of existing D&H trackage, which may not be entirely feasible, the handling of certain oversize freight cars on the Jefferson Branch of the Pennsylvania Subdivision of The Delaware and Hudson Railroad Corporation, assembled in a train with other conventional cars, requires that such combination of cars be pushed by a locomotive with the cabin car, the first or head car of the train, between points identified as CF

and JN on said branch, or in the alternative, that such cars be dropped onto a connecting or temporary storage track. This northward movement involves the crossing, at grade, of one private road, a township road and two state highway routes. Normal operation with the locomotive pulling the train would certainly be desirable from a safety standpoint.

We are of the opinion that adoption of the practice of bringing this pushing movement to a positive stop in advance of each grade crossing would present no operational problem nor would such stopping serve to delay the train to any appreciable extent, in consideration of the 15-mile an hour speed which is authorized for the movement.

Therefore, we shall direct the respondent railroads to adopt the measures necessary to insure that train movements involving the pushing of a car or cars by locomotive power on the involved line of railroad shall be restricted to a maximum speed of 15 miles an hour and that such movements shall be stopped in advance of each crossing in order that a member of the crew provide flag protection for highway traffic, so as to reduce the hazard to employees and the public. We shall further direct that such movements be provided with a cabin car, properly equipped with a permanently affixed standpipe brake valve control and air warning whistle.

Upon full consideration of the matters and things involved, we find and determine that the method of train operation cited in the complaint constitutes unsafe and hazardous conditions for the public and for respondents' employees; **THEREFORE,**

IT IS ORDERED:

1. That the complaint be and is hereby sustained to the extent hereinafter indicated and in all other respects be and is hereby dismissed.

2. That The Delaware and Hudson Railroad Corporation, within 15 days of date of service hereof, promulgate and publish in the appropriate employee timetable, special operating instructions, applicable to the railroad's Pennsylvania Subdivision between stations identified as CF and JN located thereon, which will establish a maximum speed of 15 miles an hour for train movements involving the pushing of one or more cars ahead of locomotive and which will further require that such movements of trains, where locomotives push a car or cars, shall be stopped in advance of each crossing, at grade, and flag protection provided for highway traffic by a member of the train crew.

3. That Erie-Lackawanna Railroad Company, within 15 days following the promulgation by The Delaware and Hudson Railroad Corporation of the special operating instructions referred to in paragraph 2 hereof, promulgate and publish in the appropriate employee timetable, a special operating instruction relative to the establishment by The Delaware and Hudson Railroad Corporation of said operating instructions.

4. That Erie-Lackawanna Railroad Company, within 30 days of date of service of this order, initiate the operational procedure necessary to insure that the cabin cars made available to Erie-Lackawanna Railroad Company train crews which operate on tracks of The Delaware and Hudson Railroad Corporation between Starrucca and Jefferson Junction, are properly equipped with operative air brake valves and air whistle devices located on each platform of said cabin cars.

5. That this Commission be advised by The Delaware and Hudson Railroad Corporation and Erie-Lackawanna Railroad Company, respectively, relative to the issuance of the instructions ordered herein, and that copies of said instructions be furnished to this Commission on or before October 1, 1967.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

DEPARTMENT OF HIGHWAYS OF THE COMMONWEALTH
OF PENNSYLVANIA, ET AL.

COMPLAINT DOCKET No. 18282

Crossing Abolition—Inconvenience to Individual—Public Safety—All Crossings Potential Hazards.

After considering that in practically all cases involving a relocation or improvement of a highway some individual may be inconvenienced more than others and the position of a railroad company protesting the use and maintenance of an unprotected and nearby protected crossing and its opinion that any crossing, at grade, is a potential hazard to users of the highway and employees and patrons of the railway company, the Commission determined that an existing crossing, at grade, could be abolished without causing undue inconvenience to the public.