

FINANCE DOCKET No. 20684

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY DISCONTINUANCE OF SERVICE BETWEEN
HOBOKEN, N. J., AND SCRANTON, PA.

Decided November 24, 1959

Upon investigation, found that the operation by the Delaware, Lackawanna and Western Railroad Company of passenger trains Nos. 11 and 26-28 between Hoboken, N.J., and Scranton, Pa., is not required by public convenience and necessity and the continued operation thereof will unduly burden interstate commerce. Investigation ordered discontinued.

Richard B. Wachenfeld for the carrier.

Felix G. Forlenza for the Board of Public Utility Commissioners of the State of New Jersey.

Guy R. Johnson for the Pennsylvania Public Utility Commission.

Gilbert B. Wood, Frederic G. Weir, Joseph J. Wilchek, J. J. Kelly, and *W. D. Smith* for railway employee organizations, protestants.

William E. Sandmeyer, James W. McNulty, Morey M. Myers, *Ernest D. Preate* and *Montgomery F. Crowe* for other protestants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS ARPAIA, WALRATH, AND GOFF

BY DIVISION 4:

Pursuant to the provisions of section 13a(1) of the Interstate Commerce Act, the Delaware, Lackawanna and Western Railroad Company, a common carrier by railroad subject to the provisions of part I of the act, filed a notice and supporting statements on June 26, 1959, in which it proposed to discontinue the operation of trains Nos. 11 and 26-28 between Hoboken, N.J., and Scranton, Pa., effective July 27, 1959. Copies of the notice were served and posted in the manner prescribed by section 13a and by the regulations of this Commission.

The Board of Public Utility Commissioners of the State of New Jersey, the Pennsylvania Public Utility Commission, the city of Scranton, the Borough of East Stroudsburg, Pa., various civic and business organizations, several residents of the affected communities, the Railway Labor Executives' Association, and other railway labor organizations filed objections and letters of protest against the proposal herein. Upon consideration of these objections, by order of
307 I.C.C.

July 14, 1959, we ordered an investigation of the proposed discontinuance and ordered continuation of the trains under consideration for a period not to exceed 4 months beyond the effective date of the notice. Because of limitations upon the time available for investigation, we ordered the omission of any form of recommended report as part of the decision-making process herein. A hearing has been held. The parties waived the filing of briefs. The Delaware, Lackawanna and Western Railroad Company will be referred to herein as the carrier, the railway labor organizations will be referred to as employees, and all other parties in opposition, including the State commissions of New Jersey and Pennsylvania, will be referred to as protestants.

Prior to the taking of testimony, counsel for the carrier raised the question as to the burden of proof, arguing that the burden to prove that the service in question should be continued is upon the protestants rather than upon the carrier. The examiner required the carrier to proceed with the presentation of evidence to substantiate the data submitted with its notice, to demonstrate the propriety of the accounting methods used, and to have available for cross-examination the witnesses responsible for the preparation of such data. The procedure directed by the examiner was followed, and, upon completion of the carrier's case, the case of the protestants was presented by oral testimony. See *Great Northern Ry. Co. Discontinuance of Service*, 307 I.C.C. 59. The conclusions reached in that case with respect to the matter are equally applicable here.

The trains proposed to be discontinued, hereafter identified as trains 11 and 26-28, are main-line trains operating in each direction between Hoboken and Scranton, a distance of 134.1 miles. West-bound train 11 operates daily except Saturdays, Sundays, Mondays, and holidays, leaving Hoboken at 3:35 p.m. and arriving at Scranton at 7:28 p.m. Although train 11 does not pick up and discharge passengers within the commuting area between Hoboken and Dover, N. J., it does receive revenue passengers at Newark, Brick Church, Summit, and Dover, all within the New Jersey commuting area, for discharge at Blairstown, N.J., and points beyond. Between Hoboken and Scranton, train 11 regularly serves the intermediate stations of Stroudsburg, Cresco, Pocono Summit, Tobyhanna, Gouldsboro, and Moscow, all in Pennsylvania, and from June 15 to September 15 each year it makes regular stops at Mount Pocono, Pa. In the reverse direction, train 26-28 leaves Scranton at 7:10 a.m., daily except Saturdays, Sundays, and holidays and arrives in Hoboken at 10:35 a.m., serving Gouldsboro,¹ Tobyhanna, Pocono Summit, Mount Pocono (June 15 to September 15), Cresco, Stroudsburg, Blairstown,

¹ Stops on advance notice to agent to receive passengers for Newark or New York City.
307 I.C.C.

and Dover. Between Dover and Hoboken, the train stops only at Newark to discharge passengers. Train 11 operates 4 days a week, whereas train 26-28 operates 5 days a week.² In addition to the trains herein, the carrier operates 4 trains daily (Monday through Friday) in each direction between Hoboken and Scranton, and it provides frequent commuter service between Hoboken and Dover.

The entire area through which these trains operate is traversed by a network of improved, all-weather, concrete highways, at least one of which parallels the carrier's line of railroad between Scranton and Hoboken. Except for the Pocono Mountain resort area, the territory is heavily populated. Approximately one-third of the train run lies within the commuting area extending from Hoboken to Dover. Although passengers from both trains may interchange with other rail carriers in Hoboken, Newark, and New York City, the record indicates that the major portion of passenger travel on these trains is performed between Scranton and New York City and intermediate points.

In addition to the transportation of passengers, both trains carry head-end traffic consisting of mail and express. Train 11 also carries a small amount of newspapers. Train 11 usually consists of a railway post office car, 2 storage-mail cars, a baggage car, and 1 coach with a seating capacity for 62 passengers. Occasionally, an additional coach is used during periods of increased passenger travel. Train 26-28 consists of a combination mail-baggage car, two coaches and a buffet lounge car. Each train is propelled by one class E-8 diesel locomotive or by two units of the F-7 class, depending upon operating conditions and the availability of equipment. On each train, the operating crew consists of an engineer, fireman, conductor, baggageman, and flagman. The same crew usually operates both trains.

During the period April 1, 1957, to March 31, 1958, train 11 operated 34,425 train-miles and carried a total of 11,992 passengers for an average of 47 passengers per train run. During the same period, train 26-28 operated 41,310 train-miles and carried 30,330 passengers for an average of 99 passengers per train run. For the period April 1, 1958, to March 31, 1959, train 11 operated 27,540 train-miles and carried 9,027 passengers for an average of 44 passengers per train run. In the same period, train 26-28 operated 36,473 train-miles and carried 21,937 passengers for an average of 86 passengers per train run. Additional statistics, including passenger-miles operated, passenger revenue per passenger-mile, revenue per train-mile and the average passenger-miles per train-mile are shown in appendix A. It should be noted that each train operated one less day a week in the

² Technically, train 28 operates on Mondays only, except holidays, and train 26 operates on Tuesdays through Fridays, except holidays, but they operate on the same schedule and are designated as one train in the public timetables.

year ending March 31, 1959, than in the previous corresponding year, and consequently there was a substantial reduction in the total miles operated by each train in the more recent period. The on-off counts show that trains 11 and 26-28 carried 695 and 1,758 passengers, respectively, during June 1959.

As shown by the carrier's exhibits, the revenues received from the operation of these trains during the periods indicated below, the expenses incurred in connection therewith and the net operating results were as follows:

	Apr. 1, 1957-Mar. 31, 1958		Apr. 1, 1958-Mar. 31, 1959	
	Train No. 11	Train No. 26-28	Train No. 11	Train No. 26-28
Revenues:				
Passengers.....	\$32,810	\$74,849	\$25,286	\$54,047
Mail.....	62,259	13,429	72,366	10,444
Express.....	6,811	8,183	8,573	11,336
Newspapers.....	253		294	
Total revenues.....	102,133	96,461	106,519	75,827
Expenses:				
Crew wages:				
Train crew.....	14,616	20,798	11,693	17,400
Engine crew.....	13,115	17,289	10,492	14,464
Total crew wages.....	27,731	38,087	22,185	31,864
Locomotive expenses:				
Fuel.....	11,603	13,848	9,282	11,586
Lubricants.....	898	1,073	718	897
Other supplies.....	401	488	321	409
Enginehouse expense.....	3,340	4,084	2,672	3,417
Repairs:				
Labor.....	5,576	6,714	4,461	5,617
Material.....	6,150	7,443	4,920	6,226
Total locomotive expenses.....	27,968	33,650	22,364	28,152
Car Expenses:				
Repairs:				
Labor.....	5,564	9,255	4,451	7,743
Material.....	3,654	6,078	2,923	5,084
Total.....	9,218	15,333	7,374	12,827
Train supplies and expenses.....	5,416	9,009	4,333	7,538
Total car expense.....	14,634	24,342	11,707	20,365
Dining car expenses:				
Dining car deficit.....		14,516		8,146
Depreciation, locomotive and car.....	7,282	10,329	5,825	8,641
Payroll taxes.....	5,991	8,356	4,792	6,990
Grand total, expenses.....	83,606	129,280	66,886	104,160
Excess revenue over expense.....	18,527	† 32,819	39,633	† 28,333

† Deficit.

In computing the revenues involved herein, including revenues accruing from the transportation of mail, express, and newspapers, the carrier developed an average revenue per trip for March and August for the periods under review. It then multiplied the average revenue per trip for March by the number of trips made during 9

307 I.C.C.

months of the year and the average revenue per trip for August by the number of trips made during 3 months of the year.³

With respect to operating expenses, the carrier presented figures on an out-of-pocket basis. For both years, the expenses were computed at current wage and price levels. The wages for the operating crew were based upon an average wage per trip during March 1959, and the average wage per trip was then multiplied by the number of trips made during each yearly period. In determining locomotive expenses, including the cost of fuel, lubricants, supplies, repairs, and enginehouse expenses, the total number of unit miles was applied to the cost per unit mile, the cost per unit mile having been computed at price levels during the 12-month period ended in April 1959. Similarly, car expenses, consisting of car repairs, train supplies, and labor costs, were based upon the unit cost per car-mile. Expenses covering depreciation on locomotives were computed on the basis of 1958 costs per unit mile and passenger car depreciation was based on 1958 costs per car-mile. Vacation allowances, railroad retirement, and unemployment insurance taxes were computed by applying applicable percentages to the total wages paid. On a system basis, the ratio of expense to revenue was found to be 1.56 and this ratio was applied to the revenues earned by train 26-28 to determine dining car expenses. As previously indicated, there is no dining car on train 11. It should be noted that expenses for the year April 1, 1957, to March 31, 1958, are overstated to the extent that they are calculated at current levels of wages and material costs. This is of little significance, however, since there appears to be no substantial difference in the wage-price structures during the two periods under review. Excluded from the carrier's operating costs are expenses for superintendence, maintenance of ways and structures, stations, signals, telegraph and telephone wires, moneys paid for property damage and personal injuries, salaries for officers and clerical help, and property taxes. The trains involved herein produce the lowest revenue per train-mile of any of the carrier's main-line trains.

On a systemwide basis, the carrier had a net income deficit of \$3,934,319 from freight and passenger operations for the year 1958 and, except for retroactive mail revenue of \$1,105,155 which was received in 1958, the overall deficit would have been \$5,043,474. From passenger operations, its net operating deficit in 1958 was \$3,983,981. For the 5-month period ended on May 31, 1959, the carrier's net income deficit was \$2,016,791. In 1957, the carrier's net income from freight and passenger operations was \$429,614, and its rate of return on the depreciated value of its property was 1.21 percent.

³ The carrier contended that March is representative of the fall, winter, and spring months, and that August represents all the summer months.

As to substituted service, the carrier proposed that passengers now using train 26-28 use either train 8 or train 2 from Scranton to Hoboken. Originating in Buffalo, N.Y., train 8 leaves Scranton at 5:32 a.m., and arrives in Hoboken at 8:45 a.m. Between Scranton and Hoboken, dining car service is provided. Train 2, which also originates in Buffalo, leaves Scranton at 11:15 a.m., and arrives in Hoboken at 2:50 p.m. Both trains operate daily except Sunday. The carrier further proposed that passengers now patronizing train 11 use train 5 which operates daily except Saturday, Sunday, Monday, and holidays. Train 5 leaves Hoboken at 4:50 p.m., 1 hour 15 minutes later than train 11, and arrives in Scranton at 8:05 p.m. On Mondays, the carrier operates train 25 in lieu of train 5 and if train 11 is discontinued, it would adjust the schedules of trains 5 and 25 so as to provide service to all of the stations now served by train 11.⁴ Except for the handling of local mail, as hereinafter discussed, the carrier proposed to divert to trains 5 and 25 all head-end traffic now originating on train 11.

The next westbound train after 4:50 p.m. is train 7, which leaves Hoboken daily at 8:05 p.m. and arrives in Scranton at 11:15 p.m. While the carrier operates other trains between Hoboken and Scranton, trains 2, 8, 5, 25, and 7 would be the most satisfactory substitutes for the trains sought to be discontinued. Most of the head-end traffic now handled on train 26-28 would, under the carrier's proposal, be transported on either train 2 or 8. Local mail service between Stroudsburg and Scranton and intermediate points would be provided by the carrier's existing motor-carrier operations. All other head-end traffic, including carload mail, would be handled on other trains of the carrier, as previously indicated herein.

In addition to the carrier's trains, the Eastern Greyhound Lines operates nine buses a day in each direction between New York City and Scranton via Newark, serving many of the intermediate stations. At least one bus in each direction runs on a schedule which closely parallels the schedules of the trains involved herein. In a westbound direction, Greyhound provides no service at Brick Church, Summit, Blairstown, Pocono Summit, Gouldsboro, and Moscow. In an eastbound direction, it provides no service at Gouldsboro, Pocono Summit, and Blairstown. The Frank Martz Coach Company conducts four motorbus operations daily in each direction between New York City and Scranton, although it renders no service to five of the foregoing communities. Many other buslines operate in the area between New York City and points in New Jersey. The Allegheny Air Lines provides seven regularly scheduled passenger flights each day from Newark to Scranton and eight flights daily in the reverse direction.

⁴ Train 25 leaves Hoboken at 4:50 p.m., and arrives in Scranton at 8:33 p.m.

One westbound passenger flight from Newark to Scranton is provided by American Airlines.

By the discontinuance of the trains herein, the carrier estimated that its total savable expenses would be \$143,220 a year, that its total revenue loss would amount to \$32,246 a year, and that its net annual savings would be \$110,974. Included in the savable expenses are the wages (\$22,631) of two car repairers and two coach cleaners whose jobs would be eliminated. The carrier also claimed that \$2,318 would be saved in depreciation expense by the retirement of one baggage coach and two coach cars. Excluded from its estimated savings are enginehouse expenses and labor expenses for the repair of locomotives. Appendix B shows the estimated annual loss of revenue and savings in expense as a result of the discontinuance of the trains herein. As heretofore indicated, the carrier would divert all of the head-end traffic from trains 11 and 26-28 to trains 2, 8, 5, and 25 and to its existing over-the-highway motor-carrier service and by so doing, hopes to retain all the revenues from head-end traffic. It also hopes to retain all of the passenger traffic and revenues from train 11 on the theory that passengers who ordinarily patronize train 11 use train 25 on Mondays when train 11 does not operate. As to the passenger loss on train 26-28 the carrier estimated that it would be able to retain approximately 50 percent of the patronage. Inasmuch as about 50 percent of the passengers now using train 26-28 travel to New York for business purposes, the carrier thinks that in order to adhere more conveniently to their schedules, they would seek other means of transportation. However, in its opinion, the remaining 50 percent, whose schedules are more flexible, would patronize trains 2 and 8.

Three public witnesses, two from the Scranton area and one from Stroudsburg, testified in opposition to the carrier's proposal. One witness testified that he frequently uses the trains herein for travel from the Stroudsburg area to New York City and return, stating that he has used the trains for a number of years as much as 10 times a month on a year-around basis. Another witness who objected to discontinuance of train 26-28, used it five times in 1959 for travel from Scranton to New York. He was not particularly concerned with train 11 as he usually rides a later train of the carrier back to Scranton. Other testimony was to the effect that the economic growth of the Scranton area is dependent upon good rail passenger facilities and that the discontinuance of these trains would have a detrimental effect upon the new industrial development program of Scranton. An employee representative testified as to the number of passengers who used these trains during the period July 21, 1959, to August 15, 1959. For train 26-28, his passenger count

ranged from a low of 56 on July 24 to a high of 128 on August 6. The count for train 11 ranged from 45 on July 9 to 98 on August 14. Both counts included nonrevenue passengers. One of the protestants contended that a fare increase of 3½ cents per passenger-mile on the carrier's main line passenger trains would increase the revenues on these trains in an amount equal to the estimated savings to be realized by the discontinuance. In rebuttal, the carrier showed that the present passenger fare on its main-line trains is 2.77 cents per passenger-mile, that the increase suggested by protestant would be approximately 130 percent and that such an increase would more than double the fare from Scranton to Hoboken. Moreover, the carrier has in effect a reduced round-trip coach fare on its main-line trains on Mondays through Thursdays for individuals, families, and group travel. By taking advantage of the reduced midweek fare, passengers can save from 25 to 40 percent. The plan was inaugurated to attract more passenger patronage, and the carrier contended that an increase in fares, as suggested by protestants, would not benefit the carrier or the public.⁵

In a case of this nature, the factors to be considered, among others, are the populations of the communities served, the use made by the public of the service sought to be discontinued, other means of transportation in the area involved, and the cost to the carrier of providing the service. *Colorado v. United States*, 271 U.S. 153. Of course, no one factor, standing alone, is decisive or in any manner controlling of the issues involved. Under the provisions of section 13a(1), our determination must be designed to protect interstate commerce from onerous burdens which may affect the ability of the carrier to continue to provide efficient transportation service to the public generally. Thus, in determining public convenience and necessity in this case, the entire public, rather than the relatively few individual passengers who use these trains, must be taken into consideration. Under certain circumstances, a real need for the service might justify the continuation thereof even at a loss to the carrier. Conversely, the fact that the carrier has not sustained heavy financial losses from the service sought to be discontinued should not necessarily require the continuation of the service, especially where the carrier can provide essentially the same service to the public by its remaining trains and at the same time realize substantial savings as a result of the discontinuance. On the theory that the public generally is adversely affected by unnecessary transportation services and resultant uneconomic expenditures, the elimination of such services would tend to

⁵ An increase in suburban fares was approved for the carrier in No. 32946, Increased Passenger Fares, Lackawanna Railroad, decided on July 14, 1959, with No. 32942, Increased Commutation Fares, Central R. Co. of New Jersey, 308 I.C.C. 121.

promote more efficiency in the carrier's operations and would thus be in the public interest.

During the period April 1, 1957, to March 31, 1958, the carrier sustained a financial loss of \$32,819 from the operation of train 26-28. For the same period the revenues from train 11 exceeded expenses by \$18,527 with the result that the carrier had a deficit of \$14,292 from the operation of both trains. For the period April 1, 1958, to March 31, 1959, the carrier's loss from train 26-28 was \$28,333, its revenues from train 11 exceeded expenses by \$39,633, and the combined revenues from both trains exceeded the total out-of-pocket expenses by \$11,300.

With particular reference to train 11, it should be noted that of its gross revenues of \$102,133 in the year ended March 31, 1958, \$62,259, or 61 percent, of the total accrued to the carrier from the transportation of mail. Similarly, in the most recent yearly period, \$72,366, or 68 percent, of the total gross revenues of \$106,519 was derived from the transportation of mail. Without this revenue, train 11 would have operated at a deficit of \$32,733 during the year ended March 31, 1959. The majority of the mail on train 11 is in carload lots, moving in two storage-mail cars and one railway post office car to Scranton and points beyond. As previously indicated herein, the carrier proposes to move this carload mail on trains 5 and 25. The local mail—moving principally between Stroudsburg and Scranton and intermediate points—would be handled by the carrier's over-the-highway motor-carrier service. Train 26-28 carries no carload mail. Train 11 carries an average of 44 passengers per train run and produced only \$25,286 of passenger revenues in the year ended on March 31, 1959. In the earlier period, its passenger revenues amounted to \$32,810. While there is substantially more passenger patronage of train 26-28, this train carries but a small amount of head-end traffic. Despite the heavier passenger patronage of train 26-28, it has operated at substantial deficits during each of the years under review. Under the carrier's proposal, it would lose none of the head-end traffic from either train and only 50 percent of the passenger traffic from train 26-28. For all practical purposes, the service of other trains of the carrier, as hereinbefore referred to, virtually duplicates the service proposed to be discontinued, and for that reason, among others, the operations involved herein are unnecessary and wasteful. Obviously, the continued operation of train 26-28 would impose an undue burden on the carrier and interstate commerce. To require the carrier to make an uneconomic outlay of funds to operate train 11 for the primary purpose of transporting mail—when the mail can be as adequately handled on its other trains—would also constitute a heavy burden on the carrier. The minor

307 I.C.C.

588586—62—42

inconvenience to which the public may be subjected by using other trains of the carrier must be weighed against the savings which the carrier will realize as a result of the discontinuance of the trains herein.

We therefore conclude that the passenger patronage of the trains involved herein has been relatively light and that the cost to the carrier of operating the trains greatly exceeds the benefit derived from said trains by the traveling public. We further conclude that the savings to be realized by the carrier as a result of the discontinuance of the trains outweigh the inconveniences to which the public may be subjected by the discontinuance. Upon the discontinuance of service as proposed herein, adequate substitute service for the transportation of passengers will be provided by the carrier's remaining trains, and other forms of transportation, including motor-bus, airlines, and private vehicles operating on the public highways, and mail, express, and other head-end traffic will be adequately handled by the carrier's remaining trains and by its presently existing over-the-highway motor-carrier service. In view of the alternate transportation service which will be provided, the public will not be materially inconvenienced by this discontinuance.

Employees of the carrier whose jobs may be adversely affected as a direct or indirect consequence of the proposal herein have requested that appropriate employee-protective conditions be imposed upon the carrier in the event the operation of trains 11 and 26-28 is discontinued. Because of the operation of seniority rights within the railroad industry, the directly affected crew members would be entitled to displace employees with less accrued seniority. While the directly affected employees would be able to secure other employment in their seniority district, other employees with less seniority may be temporarily displaced or furloughed. At the most, nine employees may be affected by the discontinuance of trains 11 and 26-28. In the *Great Northern Ry. Co.* case, *supra*, the Commission found that it had no authority to impose employee-protective conditions in a proceeding under section 13a(1), although the probable effect which the discontinuance may have upon employees is a factor to be considered in determining public convenience and necessity. In our opinion, the probable adverse effect upon the carrier's employees, when considered with other factors previously discussed, does not justify the findings which we are required to make before we may order continuance of the operations involved herein.

Upon consideration of the record herein, we find that the operation by the Delaware, Lackawanna and Western Railroad Company of passenger trains 11 and 26-28 between Hoboken, N.J., and Scranton,

307 I.C.C.

DELAWARE, L. & W.R. CO. DISCONTINUANCE OF SERVICE 637

Pa., is not required by public convenience and necessity and that the continued operation thereof would constitute an undue burden upon interstate commerce.

An appropriate order will be entered discontinuing the investigation.

COMMISSIONER WALRATH, dissenting in part:

I agree except as to the form of ultimate findings. See *Great Northern Ry. Co. Discontinuance of Service, supra*.

APPENDIX A

Statement showing certain statistics reflecting the result of operating trains Nos. 11 and 26-28 during the years April 1957-March 1958, and April 1958-March 1959

	April 1958-March 1959		
	Train No. 11	Train No. 26-28	Total
Passenger-miles.....	818,244	2,038,906	2,857,150
Total passengers handled.....	9,027	21,937	30,964
Train-miles operated.....	27,540	36,473	64,013
Passenger revenue per passenger-mile.....	\$0.03090	\$0.02651	\$0.02777
Revenue per train-mile (all revenue).....	\$3.87	\$2.08	\$2.88
Average passengers per train.....	44	86	67
Average passenger-miles per train-mile.....	29.7	55.9	44.6

	April 1957-March 1958		
	Train No. 11	Train No. 26-28	Total
Passenger-miles.....	1,088,312	2,874,006	3,962,318
Total passengers handled.....	11,992	30,330	42,322
Train-miles operated.....	34,425	41,310	75,735
Passenger revenue per passenger-mile.....	\$0.03015	\$0.02604	\$0.02717
Revenue per train-mile (all revenue).....	\$2.97	\$2.34	\$2.62
Average passengers per train.....	47	99	75
Average passenger-miles per train-mile.....	31.6	69.6	52.3

307 I.C.C.