

ORIGINAL

BEFORE THE
STATE RAILROAD COMMISSION
OF COLORADO.

CASE NO. 58.

THE BRECKENRIDGE CHAMBER OF COMMERCE,
Petitioner,

-vs-

THE COLORADO AND SOUTHERN RAILWAY COMPANY,
Defendant.

Submitted December 30th, 1913.

Decided February 3rd, 1914.

FINDINGS AND ORDER OF THE COMMISSION.

On September 2nd, 1913, petitioner herein filed its complaint in which it is alleged among other things, that petitioner is a corporation organized and existing under and by virtue of the laws of the State of Colorado, and is engaged in the business of promoting the commercial, social and moral welfare of the citizens of Breckenridge and of Summit County, Colorado, and that the principal place of business is Breckenridge, Colorado.

Second: That defendant is a common carrier engaged in carrying passengers and property by rail between the City of Denver, Colorado, and the City of Leadville, Colorado, over a narrow gauge line of railroad which passes through the Town of Breckenridge and County of Summit, Colorado, and is subject to the Act to Regulate Common Carriers.

Third: It further alleges that after the 10th day of November 1910, the defendant arbitrarily closed and declined to operate that portion of said railroad extending from Como to the Town of Breckenridge, and refused to carry freight or passengers over said

line of railroad.

Fourth: That on the 7th day of August 1911 your petitioner filed a complaint before this Commission setting forth the facts above stated.

That thereafter towit: on the 29th day of November A. D. 1911, and after a full and complete hearing, an order was made and entered by this Commission requiring the defendant herein to operate said line of railroad extending from Denver, Colorado, to Leadville, Colorado, which order was duly served upon the defendant herein.

Fifth: That defendant declined and refused to obey said order, and that the petitioner joined with this Commission in a petition to the Honorable District Court of the Fifth Judicial District of the State of Colorado for a writ to compel the defendant to comply with said order, and that thereafter said writ was granted by said court and was, subsequently, upheld by the Supreme Court of the State of Colorado.

Sixth: That thereafter towit: on the first day of January 1913, defendant commenced to operate its said line of railroad and then, and thereafter, and until the present time pretended to comply with the said order of this Commission.

Seventh: That the operation of said line of railroad as a whole from Denver, Colorado, to Leadville, Colorado, through the Town of Breckenridge is necessary to the commercial and social intercourse of the people residing along the line of said railroad.

Eighth: That the defendant herein declines and refuses to operate a passenger train on Sundays and that said failure and refusal on its part subjects your petitioner and all citizens residing along the said line of railroad from Denver, Colorado, to Leadville, Colorado, to great inconveniences in their social and commercial intercourse, and that said refusal to operate said Sunday passenger train is arbitrary, unlawful, unjust and in violation of the Act to Regulate Common Carriers.

Ninth: That the said order as heretofore made by this Commission will expire on the first day of January 1914, and petitioner is

informed and believes, and therefore alleges the fact to be, that on or about the said date, the defendant herein will again wholly decline and refuse to operate its said line of railroad.

Petitioner prays that defendant be required to answer this petition, and that the Commission make due and diligent inquiry into the matters and things herein set forth, and that an order be entered by the Commission requiring the defendant to operate a daily passenger train from Denver, Colorado, to Leadville, Colorado, including Sundays, and for such other and further additional relief as to the Commission may seem meet and proper.

By way of answer to said petition the defendant herein alleges:

First: As to allegations in paragraph one of said petition, it has not and cannot obtain sufficient knowledge or information upon which to base a belief.

Second: It admits the allegations of paragraph two of said petition.

Third: It denies each and every allegation in paragraph three of said petition.

Fourth: It admits the allegations of paragraph four of said petition.

Fifth: It admits that it declined to obey the order made by this Commission and that a suit was brought in the District Court and that the District Court made an order directing the defendant to comply with the order of the Commission, and that the Supreme Court of Colorado affirmed the said order of the said District Court.

Sixth: Admits that about the first day of January 1913 it commenced the operation of its line between Como and Breckenridge, Colorado, in conformity with said order and that until the present time it has complied with said order of the Commission.

Seventh: Defendant denies each and every allegation in paragraph seven of said petition.

Eighth: Defendant admits that it has declined and refused to

operate a passenger train on Sundays between Denver, Colorado, and Leadville, Colorado.

It alleges that the said order of the Commission and of the Courts did not require it to do so, and denies that such train is necessary to the convenience of the traveling public between Denver and Leadville, Colorado.

Ninth: Defendant denies paragraph nine of said petition, wherein it is alleged that defendant intends to decline and refuse to operate its said line of railroad after the expiration of the said order of this Commission.

The taking of testimony in this case was finished on the 25th day of November 1913, at Denver, Colorado.

The final arguments herein were had and the case was submitted to the Commission on the 26th day of November 1913.

In the taking of the testimony in the within case, it was stipulated and agreed by the attorneys for both petitioner and defendant herein, that the testimony taken before the District Court of the Fifth Judicial District of the State of Colorado, at the time the former hearing of Case No. 29 was had, wherein this Commission made its former order for the operation of the within named railroad, should be taken by the Commission and considered by it as a part of the testimony to be considered by the Commission in the present case, No. 58; which said testimony was duly filed with this Commission as a part of the record in this case.

Mr. Barney L. Whatley appeared as counsel for petitioner, and Mr. E. E. Whitted appeared as counsel for defendant.

FINDINGS OF FACT.

Some new and additional evidence was introduced in the present case tending to show to the minds of the Commission the actual necessity for the continued operation of the present line of railroad.

The testimony as taken before the said District Court of the Fifth Judicial District contained to a great extent the same testimony as taken before this Commission in the original hearing for the operation of this railroad.

From all the testimony submitted herein for the consideration of the Commission in the present case, it appears, that the operation of the line of the defendant railroad company extending from Denver, Colorado, to Leadville, Colorado, should be continued.

SUNDAY PASSENGER TRAINS.

There is another question, however, to be considered by the Commission at this time which was considered by the Commission in the former hearing, but which, after consideration at that time, was not deemed by the Commission of sufficient importance to necessitate an order thereon at that time.

This question is the matter of a Sunday Passenger Train.

At the time the former order for the operation of this railroad was made and entered by this Commission, there was no conclusive evidence before it which led the Commission to believe that there was sufficient business upon this line of railroad at that time to produce to the defendant company any considerable net revenue in the operation of said line of railroad, if, indeed, any at all; but the Commission deemed that under the evidence as therein ^dduced and the facts therein established and the law of the State applicable thereto, that it was the duty of the defendant at that time to resume operation of said line of railroad in such a manner as to satisfy the real necessities of the shippers and communities along said line of railroad.

In making its order at that time, the Commission was careful not to extend its order to the operation of said railroad beyond the real necessities as the Commission saw them. For that reason, the Commission ordered a daily passenger train service each way each day, excepting Sundays, and a through freight service from Denver, Colorado, to Leadville, Colorado, at least three days each week.

From the present testimony before the Commission, the Commission is constrained to believe that under present conditions it would not be warranted in increasing the service required of this company beyond that which was required in the former order of this Commission.

Petitioner has urged the necessity of Sunday trains on account of mail service, hospital service, and other service, which seemed to it to necessitate the operation of a Sunday train.

The ^{number of} passengers carried on this particular line of railroad between Denver and Leadville seems to be deplorably small. In the evidence taken before the Commission by witnesses introduced in the present hearing, it developed that from all points East of Como into Breckenridge there was about four passengers per day, considering two hundred and thirty operating days and leaving out Sundays.

From Breckenridge to Dickey the average was less than one tenth of one passenger per day. In the whole two hundred and thirty days there were sixteen passengers.

From Breckenridge to Dillon the average was one passenger per day.

From Breckenridge to Frisco the average was one-third of a passenger per day.

Between Breckenridge and Como there was an average of one passenger in five days, or forty-nine passengers in nine months.

Between Breckenridge and Robinson the average was three passengers per day.

Between Breckenridge and Leadville the average was three passengers per day.

From points between Denver and Como as far as Dillon the average was one and one-half passengers per day.

From Dillon to Leadville the average was one passenger per day.

From Leadville into Breckenridge the average would be less than

five passengers, or about four and one-half per day.

It seems that the average daily number of passengers from Denver to Leadville was about one per day, and from Leadville to points East of Como to Denver the average was less than one passenger per day.

The Commission is of the opinion that under the present state of facts, it would not be justified in increasing the service as required of the defendant in our former order.

ORDER.

It is ordered by the Commission that the defendant, the Colorado and Southern Railway Company, be, and they are hereby notified and directed to, on or before the 6th day of March, 1914, and during a period of two years thereafter, maintain, operate and conduct a through freight service from Denver to Leadville by the way of Como and Breckenridge, at least three days each week, and from Leadville to Denver by the way of Como and Breckenridge at least three days each week. That they publish on or before the 6th day of March, 1914, freight tariffs from Denver to Leadville and intermediate points and from Leadville to Denver and intermediate points, in so far as they have no such tariffs now on file, and that they receive and transport shipments to and from all stations between Denver and Leadville.

It is further ordered that defendant, the Colorado and Southern Railway Company, do operate and maintain a through and exclusive passenger train service daily, excepting Sundays, from Denver to Leadville by the way of Como and Breckenridge, and a through and exclusive passenger train service daily, excepting Sundays, from Leadville to Denver by the way of Breckenridge and Como.

Effective March 6th, 1914, and for two years thereafter.

BY ORDER OF THE COMMISSION,

A. P. Anderson
S. S. Kendall
Geo. T. Bradley
COMMISSIONERS.

Dated at Denver, Colorado, February 3rd, 1914.