

BEFORE THE
STATE RAILROAD COMMISSION
OF COLORADO.

CASE NO. 64.

L. A. Ewing and R. M. Davis,

Petitioners,

-vs-

The Denver, Boulder & Western
Railroad Company,

Defendant.

O R D E R.

INADEQUATE FACILITIES.

Submitted April 20th, 1914.

Decided April 30th, 1914.

STATEMENT OF CASE.

On March 13th, 1914, the petitioners filed their petition herein, in which, among other things, it is alleged:

That petitioners are lessees and are now operating the White Raven group of mines under lease and contract to purchase said group of mines, and have been such since the 14th day of February, A. D. 1913, the said group of mines being located at Puzzler, Boulder County, Colorado, five-eighths of a mile from Puzzler Station, on the line of The Denver, Boulder & Western Railroad Company between Boulder and Ward, Colorado, in said Boulder County.

That the defendant above named is a common carrier engaged in the transportation of passengers and property by railroad between Boulder and Ward, in Boulder County, State of Colorado, and as a common carrier is subject to the act regulating common carriers.

That the defendant has failed, since the 30th day of November, A. D. 1913, to transport to Boulder a certain carload of ore loaded

by petitioners and standing on the sidetrack of defendant at Puzzler Station.

That the defendant has failed to furnish them empty cars for the purpose of loading ore at Puzzler Station.

That since on, to-wit, the 20th day of November, 1913, and during the period that defendant has failed to operate its said railroad from Sunset Station to Puzzler Station, said defendant has operated its line of road from Boulder to said Sunset Station, and from Sunset Station to Eldora, on other and different branch line of its said line, and has thereby discriminated against petitioners.

That for about eight years it has been the practice of defendant to discontinue service on the Ward branch of its line, which is beyond Puzzler Station, for long periods of time during the winter months.

That the transportation of ore from said White Raven group of mines over said railroad line is the best method of transporting said ore to market.

Petitioners pray that defendant may be required to answer the said charges, and that an order be made commanding the defendant to cease and desist from said violation of the act to regulate common carriers, and for such further order as the Commission may deem reasonable; and that an order be issued requiring said defendant to operate said railroad with reasonable service throughout the entire year.

On April 2nd, 1914, the defendant filed its answer thereto, in which, among other things, it is alleged:

It admits that since November 30th, 1913, it has been unable to operate its line of railroad from Ward, Colorado, to Sunset, Colorado, on account of snow blockades which have existed from time to time, and still exist. That it has put forth every effort to clear the snow from its line of road, but on account of high winds, and continued snowfall, it has been unable by any exertion to open said line; that this is the only reason why said line has not been oper-

ated.

Defendant admits that it has been able to operate its line from Boulder to Eldora for portions of the time, but denies that in doing so it has had any intention of discriminating against petitioners, or any of the parties on its line between Sunset and Ward.

Defendant alleges that wherever it has abandoned its service during the winter time, it has been due either to its inability to keep its line open on account of snows and other weather conditions, or due to the fact that there was no business on said line to be carried.

Answering the complaint of petitioners generally, this defendant says that from December 1st to December 5th, 1913, there was a great and unprecedented snow storm prevailing in the mountains along its line from Sunset to Ward; that there was a fall of more than seven feet of snow along said line at that time and during the winter a fall of more than eleven feet; that on or about December 9th, the line of defendant between Boulder and Eldora was opened and also the line from Sunset to Ward, on or about December 13th; that daily service was resumed by defendant on its line from Sunset to Eldora and maintained from December 9th to December 31st; at which time winds of such velocity prevailed that the tracks were blockaded with drifted snow from a point nine miles west of Boulder to Eldora and Ward; that defendant's train was stalled in the drifted snow during said period at a point about fifteen miles west of Boulder and the winds were of such a character as to prevent the men from working, so that said train was not released until about January 1st, 1914, on which date it required the entire force of the defendant two days to remove the train back to Sunset; that on January 2nd, 1914, two miles of slides from three to fifteen feet deep were removed from the tracks of defendant between mile posts 9 and 13 and the train of December 31st, 1913, brought into Boulder; that high winds continued daily throughout the entire month of January, preventing men from working on the drifts a great portion of the time,

causing an intermittent service over the line from Sunset to Eldora; that the tracks of defendant were completely buried with hard, drifted snow from one to twenty feet in depth for a distance from one to 500 feet; early in January, 1914, the line of defendant was cleared from Glacier Lake to Eldora, twenty-three miles west of Boulder, but an effort to clear the line beyond that point resulted in breaking defendant's snow plow, causing a large expenditure for labor without attaining any results, the snow being too deep and the drifts too hard to remove with any facilities possessed by the defendant; that on or about January 15th, the defendant secured a rotary/^{snow}plow from The Colorado & Southern Railway Company and thereby cleared its line between Glacier Lake and Eldora, and at this time it attempted to use said plow in clearing its line from Sunset to Ward, but on account of the conditions on the line between said points and the depth of the cuts and the drifted condition of the snow on the tracks, it was unable to operate said snowplow for the purpose of clearing such line; that during the latter part of January, 1914, high winds prevailed in the mountains, filling up all of the cuts on the Ward line with hard snow and ice; that during the early part of February, an additional snowfall of fourteen inches occurred, accompanied by high winds, again filling up all of the cuts; that wind continued almost daily during the first half of February, making it impossible to work in opening up any blockaded portion of defendant's line; that the same condition continued during the first week in March, when the snow was again drifted to a depth of eight feet in the cuts, making it difficult, if not impossible, to do anything at said time.

It further alleges that the entire earnings of defendant's line of railroad are not sufficient to pay defendant's operating expenses; that said earnings during the seven months ending January 31st, 1914, were \$9,141.36 less than actual expenses during the same period and that said earnings during the fiscal year ending June 30th, 1913, were \$6,000.44 less than actual operating expenses

during said year; that the entire line of defendant is being operated at a loss and was so operated during the past two years.

Defendant asks that the petition herein be dismissed.

Appearances: Henry O. Andrew, Boulder, Colorado, attorney for petitioners.

Theodore M. Stuart, Denver, Colorado, attorney for the defendant.

OPINION
and
FINDINGS OF FACT.

It appears from the evidence submitted herein that defendant owns a line of narrow gauge railroad extending from Boulder, Colorado, to Sunset, Colorado, a distance of 13.3 miles; that from Sunset there are two branches extending westwardly, one to Eldora, a distance of 20.1 miles from Sunset; the other to Ward, a distance of 12.8 miles from Sunset. That the entire railroad extends westwardly from Boulder through deep canons, and with heavy grades to the junction at Sunset, from whence the different branches continue westwardly up steep mountain grades, reaching an altitude of 9,450 feet at Ward, and 8,730 feet at Eldora.

That the said railroad is essentially a mountain railroad, traversing high altitudes where heavy snows fall during a great part of the year and where a great deal of care and expense is required in the operation of said lines.

That petitioners own and operate a mine at Puzzler, a station on said line of railroad a distance of 8.6 miles from Sunset.

Defendant does not deny its duty to operate its line of railroad between Boulder and Ward, but pleads its inability to do so on account of weather conditions.

It further appears from the evidence, and is uncontradicted

by petitioners herein, that the whole line of said railroad is operated at a loss, not including interest on bonded indebtedness and taxes.

That said railroad has been in bankruptcy two times.

That it has been the practice in the summer time to operate a daily train between Boulder, and Eldora and Ward, but that in the winter time, only a weekly train has been operated to Ward.

That about September 8th of last year the daily service was discontinued to Ward, and a weekly schedule was filed.

It appears that there is no intention on the part of defendant to abandon any part of its line.

It also appears that the total actual loss in operating expenses alone, and not including taxes and interest, for the fiscal year ending June 30th, 1913, was \$6,000.44.

That the total loss in operating expenses for the seven months since June 30th, 1913, was \$9,141.36.

It does not appear that there has been any extravagance in the management or operation of defendant company's line of railroad; it appearing that only \$10,000.00 was expended for office expenses per year, including the salaries of officers, office supplies, legal expenses, rent, stationery, and printing.

It also appears from the evidence (Page 147, transcript of evidence) that the company has been losing money for sixteen years; that it has never made any money for the stockholders; that in five years the company has only paid $4\frac{1}{2}\%$ on its income mortgage bond, or nine-tenths of 1%; that the bonded indebtedness calls for 5% interest.

It also appears from the testimony of Mr. Hayes, President of the Denver, Boulder & Western Railroad Company, that between December 1st and December 5th, 1913, the average snowfall in the mountains along the line of defendant's railroad was seven feet.

Page 138, transcript of evidence:

Mr. Hayes: "December 1st to 5th, the average snowfall in the

mountains along the line of the railroad was 7 feet. That blockaded all lines. The Eldora line was cleared December 9th; the Sunset-Ward line December 13th. Daily service resumed and maintained upon the Eldora line December 9th to 31st, when wind of such great velocity prevailed that the tracks were blockaded with drifts and snow from mile post 9, west of Boulder, to both Eldora and Ward. The train of the 31st was stalled in the snow fifteen miles west of Boulder on the Eldora line; the wind was so great the men could not work in it. That train could not be released until January 1st, on which day it required our entire force all day to move the train two miles back to Sunset. January 2nd, two miles of slides, from 3 to 15 feet deep were removed from the track between mile post 9 and 13, and the train of December 31st was brought back to Boulder. High winds continued almost daily throughout the entire month of January, preventing the men from working on the drifts the greater portion of the time, thus causing intermittent service to Eldora and no service to Puzzler or Ward. Tracks were again buried with snow drifts from 1 to 20 feet in depth for a distance of 100 to over 500 feet in length early in January, at which time the line was cleared to Glacier Lake, mile post 23 from Boulder, on the Eldora line. We endeavored to clear the line from Glacier Lake to Eldora, but the snow was so hard we could make no impression upon it with our motive power and snow plow. Drifts were too deep and too hard to remove. At that time, and before that, we negotiated with the Colorado & Southern Railway Company for the rental of their rotary snow plow, which was in use on the South Park division of that company's line. It was released and brought to us at Boulder from Leadville and delivered to us January 15th. With three engines and the rotary snow plow, in thirty hours time we succeeded in clearing a line between Hill station and Eldora, approximately 10 miles."

It is contended by petitioners that it is immaterial what the expenses or losses of defendant railroad are, or whether or not defendant is operating at a profit.

We cannot agree with petitioners in this matter on this point.

In the case of the Breckenridge Chamber of Commerce, vs. The Colorado & Southern Railway Company, heretofore decided by this Commission, and in which it was disputed whether or not the defendant was earning any net profit, the Commission ordered the operation of the road. However, all testimony showed that the branch ordered to be operated was only a part of the whole system, which system was paying regular and reasonable dividends on its stock.

It is contended by petitioners that in law the defendant is required to operate regardless of the question of loss. The Railroad Commission law of Colorado provides that all orders of the Commission must be reasonable, and in ordering the operation of the defendant company's line, the question of loss on the part of the entire system should certainly be considered in regarding the question as to what would be a sufficient service to be ordered, after considering said loss.

It is the opinion of the Commission that while the defendant should be required to operate its road, that no unreasonable service should be required.

The defendant company while retaining its charter should render such service as is within its reasonable power to perform.

We are of the opinion, however, that the present weekly service is sufficient in the winter time from Sunset, Colorado, to Ward, Colorado. That defendant should use due diligence and all reasonable effort within its financial means, and all reasonable power at its command to maintain said weekly train in and out of Ward.

ORDER.

IT IS ORDERED, that the defendant, The Denver, Boulder and

Western Railroad Company be, and it is hereby notified and directed to, on or before the 2nd day of June, 1914, and during a period of two years thereafter, maintain and operate at least one combination passenger and freight train each week from Boulder, to Ward.

BY ORDER OF THE COMMISSION.

Aaron P. Anderson

J. S. Hendall

Geo. I. Bradley
Commissioners.

Dated at Denver, Colorado, this 30th day of April, 1914.