

SEP 12 1988

RAILWAY LABOR ACT DOCKET No. 12
UTAH IDAHO CENTRAL RAILROAD COMPANY

Submitted February 27, 1936. Decided March 18, 1936

The Utah Idaho Central Railroad Company's lines found not to constitute a street, interurban, or suburban electric railway within the meaning of the exemption proviso in the first paragraph of section 1 of the Railway Labor Act, as amended June 21, 1934.

J. H. DeVine, J. A. Howell, and David L. Stine for carrier.
Ezra Brainerd, Jr., and D. A. MacKenzie for labor organizations.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS McMANAMY, PORTER, AND MILLER

McMANAMY, *Commissioner*:

This proceeding was instituted at the request of the National Mediation Board to determine whether the Utah Idaho Central Railroad Company is exempt from the Railway Labor Act as amended June 21, 1934, under the proviso to the first paragraph of section 1 thereof, which reads as follows:

Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

A hearing has been held at which evidence was introduced on behalf of the above-named railroad company, which contends that it is exempted by the proviso quoted, and its witness was cross-examined by a representative of the Brotherhood of Railroad Trainmen. Briefs have been filed on behalf of the parties named together with the Railway Labor Executives' Association, which joined the Brotherhood of Railway Trainmen in opposing the railroad company's contention. Exceptions were filed by the carrier to the report proposed by the examiner, and the parties were heard in oral argument.

The Railway Labor Act as amended June 21, 1934, provides for the prompt and orderly settlement of disputes between the carriers and their employees. The first paragraph of section 1 thereof defines the term "carrier" as including among others any carrier by

railroad subject to the Interstate Commerce Act, which is followed by the proviso hereinbefore quoted. There is no question that the Utah Idaho Central is a carrier by railroad subject to the Interstate Commerce Act, except such sections thereof as contain exemptions somewhat similar to that here under consideration. This railway is operated by electric power, and none of its stocks or bonds are owned by any steam railroad. The only issue therefore is whether it is a street, interurban, or suburban railway within the meaning of the proviso.

In the first case arising under this proviso in the Railway Labor Act, *Texas Electric Ry.*, 208 I. C. C. 193, division 6 said at pages 194, 195:

The amended Railway Labor Act does not indicate the purpose of exempting the class of lines referred to in the proviso to the first section. No reason is apparent for distinguishing between steam and electric power, and the act does not purport to exempt all electric lines. There are other reasons which may have influenced Congress, but we think the fundamental reason was that the lines exempted are essentially local in character and largely disassociated from the steam-railroad systems. This belief is confirmed by reference to the Congressional hearings preceding the passage of this act and other acts containing similar exemptions, which hearings are referred to in the briefs and oral argument of both sides.

Previous to the passage of the amendment to the Railway Labor Act on June 21, 1934, this Commission had rendered numerous decisions regarding the status of particular electric lines under somewhat similar exemption provisions in certain sections of the Interstate Commerce Act and other acts which we administer. These decisions recognized the existence of a class of electric railways which are more than street, interurban, or suburban lines, and which are sometimes referred to as commercial railways operated by electric power. Perhaps the best description of what constitutes a street, interurban, or suburban railway was given in *Rules for Testing Other Than Steam Power Locomotives*, 122 I. C. C. 414, where the Commission said at page 424:

"It is well known that electric cars were at first confined to street service in cities and towns. Gradually the lines were extended to the suburbs. Next came the idea of extending the lines from city to city. These three steps gave rise to the terms street, suburban, and interurban electric railways. These lines were limited almost exclusively to carriage of passengers. They were built largely upon streets and public highways. The only material difference between street, suburban, and interurban lines was the extent of the lines. If the line extended from city to city it was termed an interurban although handling the same traffic and being operated in substantially the same manner as the street or suburban line. We think this is the usual conception of the interurban line today.

"Obviously the character of the lines may change without a change in the name of the operating company. The record here shows that the name of a carrier, whether it is called a railroad, traction system, interurban railway, or power and light company, indicates nothing as to the character of the line or the nature of the traffic handled. We must look to the substance of the matter. A line which today extends only between two cities, and is dependent upon passenger traffic for the bulk of its revenues, might properly be termed an interurban line. In a period of years it might through natural development or

consolidation become a railway comparable with our steam railroads and still retain its original name. It would no longer, however, be an interurban railway in substance and in fact. There would be a point, although not definitely defined, where the line passed beyond the true interurban."

The Utah Idaho Central extends from Ogden, Utah, north to Preston, Idaho, a distance of 94.63 miles, with two branch lines of approximately 7 and 14 miles respectively. It also has 36.93 miles of siding, spur, and yard tracks, making a total of 152.68 miles of track. All of this is within the State of Utah, except about 6 or 7 miles in Idaho, and with the exception of Preston the points herein mentioned are in Utah. The principal cities served, with their populations, are Ogden 40,272, Brigham 5,093, Logan 9,979, and Preston 3,381, and 14 other cities or incorporated towns are served, having a population ranging from 275 to 2,353 each. Almost all of the line is in the Great Salt Lake Valley and the Cache Valley, which are largely agricultural sections separated by a part of the Wasatch Mountains. This railway closely parallels the main line of the Oregon Short Line Railroad Company for about 40 miles north of Ogden, and it parallels a branch of the same trunk line for most of the remaining distance to Preston. The number of employees averaged about 150 in 1934.

The history of the Utah Idaho Central and its predecessors began about 1890, when 3 or 4 miles of street railway in Ogden were operated with horse-drawn cars. This property was acquired by the Ogden Rapid Transit Company in the late nineties, which marked the beginning of its electrification, rehabilitation, and expansion. During the same period in the late nineties, the Ogden & Northwestern Railroad Company built a line from Ogden to Hot Springs, 9 miles, which it operated with a small steam locomotive. About 1910 that line was also acquired by the Ogden Rapid Transit Company, which equipped it for electrical operation and extended it to Brigham, 21 miles from Ogden. Contemporaneously with this development between Ogden and Brigham, the Logan Rapid Transit Company built a street railway in the city of Logan, together with lines to Smithfield, about 8 miles north, and to Wellsville, 12 miles south, of Logan, all operated with electric power. In 1914 the Ogden Rapid Transit Company and the Logan Rapid Transit Company were consolidated into one corporation, the Ogden, Logan & Idaho Railroad Company, which built a connecting line from Brigham north over the Collinston Divide to the southern terminus of the Logan Rapid Transit Company, and also extended the latter's line northward from Smithfield to Preston. In the latter part of 1919, the street-car operations in Ogden and a suburban operation into Ogden Canyon were segregated from the other lines and have since been operated

by a separate corporation, the Utah Rapid Transit Company, which is not involved in this proceeding. The name of the Ogden, Logan & Idaho Railroad Company was later changed to the Utah Idaho Central Railroad Company, a Utah corporation, and in 1926 the latter was reorganized as the Utah Idaho Central Railroad Company, a Delaware corporation. In recent years the company has established and operates a motor-bus service parallel to its railway, and it has substituted motor busses for the local street-car service in Logan. The railway was practically entirely financed by citizens of northern Utah, who have to a large extent retained their interest therein, and many of the employees have remained the same through the various corporate changes.

Approximately 81.8 percent of the railway is located on privately owned right-of-way, and the remaining 18.2 percent is located on public streets or highways. The latter includes from 0.19 to 2.02 miles in each of 15 cities and towns, or a total of 14.1 miles, and 6.54 miles of the branch lines are on county roads. In many, if not most, instances the line passes through the cities and towns on their main business streets, and the terminal in Ogden is near the business center. Some of the franchises to use the streets and highways were granted for a street railway, an interurban, or a street and interurban railway to be operated with electricity, compressed air, or liquefied air as motive power, but more of them were granted for the operation of a double-track or single-track railroad, generally with a restriction against the use of steam or other motive power which might scatter sparks or fire. In a few instances the use of steam power was not specifically prohibited, and one franchise authorized its use for the first 25 years, which have now expired. In 1926 the franchises were generally amended to include operation as a common carrier by motor vehicle.

The tracks are of standard gage with 80 miles of 70-pound rail and 11 miles of 65-pound rail on the main line, 20 miles of 45 to 48 pound rail on the branches, and 26 miles of 48-pound rail on the sidings and spurs, the remainder varying from 40 to 85 pounds for comparatively short distances. The ties are 6 by 8 inches and 8 feet long, spaced 2 feet between centers, and only 11.3 miles of the main line are tie-plated. There are 70 places on the main line where the grade breaks or changes, which is an average of nearly one to every mile. The maximum grade is 4.77 percent for one tenth of a mile in the city of Logan, which is necessary to conform with the grade of the street. Outside of that, the maximum grade is 2 percent at several places for an aggregate of 18.9 miles, most of which is encountered in going over the Collinston Divide. The line makes a long circuit in going over the divide, and the sharpest curve on the

main line is 12°. The most difficult curves are on the spur tracks where, in at least two instances, there are 60° curves with a radius of 100 feet. On such curves it is often necessary to switch the largest box cars one at a time, but there is no restriction here or elsewhere against steam-railroad freight cars. Steam locomotives, however, could not safely operate over many of the sidings or spur tracks.

The passenger trains consist of either one or two cars, which are self-propelled, and in 1934 they averaged 1.1 cars per train. There are 73 places on 107 miles of line where stops are made for passengers, of which 52 are flag stops. The number of passengers carried in 1934 was 408,634, of which 175,599 were students going to and from centrally located schools at public expense. The passengers handled by train and bus are not shown separately, but in 1934 the number of busses operated averaged 4.1 per day compared with a daily average of 11.5 passenger trains. No interline tickets are sold except in connection with other electric railways operating in Utah. The average fare paid ranged from 29.6 cents in 1931 to 20.7 cents in 1934. The passenger revenues have declined every year since 1920, those for 1934 being \$61,346.25 compared with \$448,184.01 in 1920. This has been due primarily to the steadily increasing use of private automobiles, together with the construction of paved highways, particularly one which is 20 miles shorter than the railway between points in the Great Salt Lake Valley and the Cache Valley. The passenger trains carry baggage, mail, and express, which in 1934 yielded \$39.48, \$2,660.33, and \$5,931.50 respectively.

The freight traffic consists to a large extent of raw products such as sugar beets, milk, tomatoes, and peas moving to factories, canneries, or processing plants, and the manufactured products moving outbound from such plants to connecting railroads. A considerable portion of the raw-products movement requires special service with 1-car or 2-car trains. A daily package-merchandise train is maintained with facilities for refrigeration in summer and heating in winter and with pick-up and delivery service at all available points. In 1934 all of the freight trains averaged 6.2 cars each, and the number of trains per day ranged from an average of 4.4 in March to 14.7 in October with an average of 7.7 throughout the year. During the last half of 1934, this carrier handled 6,354 carloads of freight, of which 2,226 were local and 4,017 were interchanged with other carriers. Of the interchange traffic, 2,075 carloads moved to or from points in Utah and 1,942 to or from points in other States. The traffic originated on this carrier moved to points in 31 States and that delivered by it was from points in 26 States. The commodities originated in greatest volume were beets, sugar, potatoes, sand and gravel, milk, canned goods, tomatoes, sheep, cans, and cattle;

and those delivered in greatest volume were beets, coal, sand, gravel, and rock, gasoline, ties, lumber, and poles, and cans. This carrier is a party to practically all of the tariffs publishing through rates to or from this territory, and its interchange traffic generally moves on joint rates. It does not perform any intermediate service between other lines.

The carrier owns five 50-ton electric locomotives and two 35-ton electric locomotives, which are used to haul its freight trains. In addition it has three self-propelled cars which have been constructed and equipped for hauling package freight and can be used to pull other cars when necessary. The largest locomotives have factory ratings ranging up to 1,000 tons on the main line, but their practical ratings are generally 550 to 650 tons, or 12 to 14 cars averaging 45 tons each, except at two or three places where such ratings are only 5 to 8 cars up grade. A helper engine is occasionally used, but that is not the usual practice. A train of empties might have a larger number of cars, but it would be subject to air-brake limitations of 30 cars on the principal grades and 45 cars elsewhere. Four electric-power substations have capacities ranging from 500 to 1,000 tons of load on their respective sections of the line. The carrier also owns 100 gondola cars, 22 ballast cars, 18 box cars, 14 flat cars, 12 stock cars, and 7 refrigerator cars; but only 98 of the gondolas and 1 flat car are interchangeable with the steam railroads, and the gondolas were bought for local service. Practically all of the interchange traffic is therefore handled in standard equipment furnished by connecting railroads. Interchange connections are maintained with all of the trunk lines reaching Ogden, also with the Bamberger Electric Railroad Company at the same point, and with the Oregon Short Line at several other points. There are 84 sidings, spurs, or yard tracks with capacities ranging from 2 to 32 cars and averaging 16 cars.

Freight has always contributed a large proportion of the revenues since the completion of the line in 1915. The freight revenues have exceeded the passenger revenues in every year since 1918, the former being more than double the latter in 1926 and 1927, more than three times in 1928 and 1929, more than four times in 1930 and 1931, more than five times in 1932, and more than six times in 1933 and 1934. During the last five years, from 1930 to 1934, inclusive, the freight revenues amounted to \$2,021,724.57, and the revenues from passengers, mail, and express totalled \$448,941.62, which amounts were approximately 81.9 and 18.1 percent of the total revenues, respectively. The freight revenues reached a peak in 1920 and a somewhat higher peak in 1928, since which they have generally declined but not so much as the passenger revenues.

The carrier compares its line with the steam railroads in various respects. Although some of the steam railroads have as heavy or heavier grades in crossing the Rocky Mountains and the Sierra Nevada, grades and curves such as this carrier has are always avoided on the transcontinental lines wherever possible. It is admitted that steam railroads also operate along city streets in many places, including Ogden and Salt Lake City, Utah, but they do not use any main business streets in Utah cities. The average capacity of the sidings on this carrier's lines is much less than those on the trunk lines within 200 miles of Ogden, which range from an average of 86 to 114 cars on the various lines. The average length of its trains is also much less than those on the same trunk lines, which in 1934 averaged from 7 to 11 cars in passenger trains and from 45.1 to 63 cars in freight trains. The average cost of operation in 1934 for enginemen and trainmen on the lines of this carrier was 5.1 cents per car-mile in passenger service and 2.59 cents in freight service, which figures are compared with corresponding costs on the trunk lines ranging from 2.64 to 3.74 cents per car-mile in passenger service and from 0.57 to 1.12 cents in freight service. Similar comparisons are made with the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, where the average cost in 1929 for enginemen and trainmen in passenger service was 3.08 cents per car-mile on the electrified section and 4.82 cents on the portion operated with steam power, and the corresponding costs in freight service were 1.01 and 1.16 cents respectively. All of the carrier's comparisons were with trunk lines which handle a large amount of transcontinental freight and passenger business. It would be fairer to compare this carrier with steam railroads of similar size or with branch lines of the larger railroads. It is said that there are no independent steam railroads of comparable size in Utah, but such railroads exist elsewhere, and there are undoubtedly branch lines in this same territory.

The carrier endeavors to distinguish its line from other electric railways which have been found not to be interurbans within the same exemption proviso of the Railway Labor Act in *Texas Electric Ry., supra*; *Sacramento N. Ry.*, 208 I. C. C. 203; and *Waterloo, C. F. & N. Ry.*, 208 I. C. C. 211. It is pointed out that the Texas Electric Railway performs an intermediate service between steam railroads, that the Sacramento Northern Railway is a subsidiary of the Western Pacific Railroad Company, and that the Waterloo, Cedar Falls & Northern Railway sells interline tickets, maintains off-line solicitors, and filed applications to issue securities under section 20a of the Interstate Commerce Act, which exempts interurbans. However, it does not appear that the physical characteristics of the

Utah Idaho Central differ greatly from the above-mentioned electric railways, as disclosed by the reports cited. The maximum grades are 2 percent on the Texas Electric, 4.6 percent on the Sacramento Northern, and 6 percent on the Waterloo, Cedar Falls & Northern. Both the Texas Electric and the Waterloo, Cedar Falls & Northern have curves with a radius of 50 feet, and some of the curves on the Sacramento Northern are too sharp for steam locomotives. The percentage of this carrier's right-of-way that is located on public streets or highways is considerably greater than in the case of the Texas Electric and Sacramento Northern but slightly less than the Waterloo, Cedar Falls & Northern. The freight trains of the Utah Idaho Central average somewhat smaller than those of the other three carriers, but its freight revenue is a larger proportion of the total revenues than on any of the others.

The Utah Idaho Central is paid for carrying the mail at rates prescribed in *Electric Railway Mail Pay*, 58 I. C. C. 455, 98 I. C. C. 737, under an act applicable to "urban and interurban electric railway common carriers". The same is true of the other electric railways which have been found not to be interurbans within the exemption proviso in the Railway Labor Act, but the Commission has never determined the status of this or the other lines under the above-mentioned mail-pay act. During Federal control the Director General of Railroads addressed a letter to the president of this carrier under date of June 29, 1918, which advised that: "Pursuant to the recommendation of the Regional Director, the Utah Idaho Central is relinquished from Federal control". Notwithstanding this letter, the carrier contends that it was never under Federal control, as no orders, directions, or benefits relative to such control were ever received. For the purposes of this proceeding, it is unnecessary to determine whether the carrier was under Federal control prior to June 29, 1918.

The carrier contends that the number, frequency, and smallness of its trains among other things stamp it as an interurban, but none of these were among the factors which division 6 said are the most important in determining whether an electric railway is an interurban or commercial railway in *Texas Electric Ry., supra*, at page 202:

The Commission's views as to what constitutes an interurban were stated in *Rules for Testing Other Than Steam Power Locomotives, supra*. Those views should not be lightly departed from after Congress has authorized the Commission to determine the status of electric railways under a similar exemption provision in an act not otherwise administered by us. In harmony with that and similar decisions, we are of the opinion that an electric railway which is engaged in the general transportation of freight, whether the revenue therefrom is greater or less than its passenger revenue, which handles the

bulk of such freight in standard equipment similar to that used by the steam railroads, which freely interchanges the same with the steam railroads for transportation to or from points on their lines, a considerable portion thereof being handled in interstate or foreign commerce, and which participates in joint rates with the steam railroads for interstate transportation, has more of the characteristics of a commercial railroad operated by electric power than of an interurban as that term is used in the exemption provision under consideration. Of course, there are many other circumstances and conditions which may have a bearing on the question, and some electric railways are of such an unusual character that their status might depend on other things, but we believe the factors referred to are generally the most important and should be given great weight where all of them exist together.

A petition to reopen that decision was denied by the Commission on May 13, 1935. This carrier's traffic complies in every respect with the above-described characteristics of a commercial railroad operated with electric power.

The Utah Idaho Central was found not to be a street, suburban, or interurban electric railway within a similar exemption provision of the Locomotive Inspection Act in *Rules for Testing Other than Steam Power Locomotives*, 122 I. C. C. 414. The appendix to that report shows that this carrier's freight revenues were less than double its passenger revenues during the years for which the figures were there given, 1923, 1924, and 1925, whereas the present record shows that its freight revenue was more than six times its passenger revenue in 1933 and 1934. Such previous decisions relating to the status of the same carrier under a similar exemption provision should not be lightly departed from in the absence of changed conditions, and such changes as have taken place with respect to this carrier tend to confirm and strengthen the conclusion that it is not a street, interurban, or suburban railway. See *Sacramento N. Ry., supra*, and *Waterloo, C. F. & N. Ry., supra*.

In *Piedmont & N. Ry. Co.*, 211 I. C. C. 4, decided October 11, 1935, division 3 said at page 8:

Previous to the amendment to the Railway Labor Act on June 21, 1934, this Commission had passed upon the status of numerous electric railways under more or less similar exemption provisions in other acts administered by us. Those decisions recognized a class of electric railways which were regarded as more than interurbans and were sometimes referred to as commercial railways operated by electric power. The distinction between them hinged largely upon the amount and character of freight business handled, an interurban being considered primarily a carrier of passengers and its freight traffic largely local. When Congress authorized this Commission to determine the status of electric railways under the Railway Labor Act, which is not otherwise administered by us, it is reasonable to suppose that it did so because of our experience in passing upon such questions under similar exemption provisions in other acts. This may also be regarded as a pretty good indication that Congress used the word "interurban" in the same sense as the Commission had interpreted that term in its decisions.

In all of the Commission's decisions dealing with the status of electric railways under the same and similar exemption provisions, it has never found one, which derived so large a proportion of its revenue from freight as this carrier does, to be an interurban.

We find that the Utah Idaho Central Railroad Company's lines do not constitute a street, interurban, or suburban electric railway within the meaning of the exemption proviso in the first paragraph of section 1 of the Railway Labor Act, as amended June 21, 1934.

214 I. C. C.