

Abandon - Grass Creek Branch

FINANCE DOCKET No. 12140

UNION PACIFIC RAILROAD COMPANY ABANDONMENT

Submitted June 21, 1939. Decided August 1, 1939

Grass Creek branch of Union Pacific Railroad Company, in Summit County, Utah, held to be a spur. Application dismissed for want of jurisdiction.

Dana T. Smith and *F. J. Melia* for applicant.

P. H. Neeley and *S. K. Lambourne* for protestants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, MAHAFFIE, AND MILLER

BY DIVISION 4:

The Union Pacific Railroad Company on August 15, 1938, applied for permission to abandon a line of railroad known as the Grass Creek branch, extending from Grass Creek Junction northeasterly to the end of the track near Grass Creek, approximately 5.59 miles, together with 0.42 mile of track serving a coal-mine tipple at the end of the branch, all in Summit County, Utah. Protests were filed and a hearing held.

An examiner's proposed report was served, recommending granting of the permission requested. Exceptions were filed, as was also a stipulation as to facts which developed after the hearing. Thereafter the Public Service Commission of Utah suggested that the trackage in question is a spur or industrial track within the meaning of section 1 (22) of the Interstate Commerce Act, which excepts from the provisions of section 1 (18) the abandonment of spur, industrial, team, switching, or side tracks located wholly within one State, and therefore not within our jurisdiction. In support of that position it refers to *United States v. State of Idaho*, 298 U. S. 105.

The case cited involved about 9 miles of track known as the Talbot spur of the Oregon Short Line Railroad Company in Teton County, Idaho, on which there were two stations, namely, Talbot and Dygert. See *Oregon Short Line R. Co. Abandonment*, 193 I. C. C. 697, 698. The District Court of the United States for the District of Idaho found that the trackage was built for the purpose of serving a single industry, that practically no other industry was served, that the trackage did not invade new territory, that its continued operation or abandonment was of local and not of national concern, and that therefore it was a spur. It was shown that the Oregon Short Line

had never maintained regular service, had not furnished express, passenger, or mail service, and had no buildings, loading platforms, or agent at any point along the line; that bills of lading were made out by the coal company whose mine was served by the branch; and that there were practically no inbound shipments, the few supplies for the mine being sent in empty coal cars when ordered. The United States Supreme Court affirmed the decree of the district court, stating that the findings were amply supported by the evidence.

The Grass Creek branch herein involved was built in 1895 and 1896 by the Grass Creek Terminal Railway Company to serve the Grass Creek mine, which mine is the only source of traffic on the line. There are no stations thereon, except Grass Creek, at which there is no agent, there being only one resident at the Grass Creek mine camp. The line is in a canyon and is inaccessible except by way of the junction. There are a few isolated ranches in the tributary territory but no villages or communities. The members of the Grass Creek Fuel Oil Cooperative, which now operates the mine, live at Coalville, about 7 miles distant. There is no service except as there are loads of coal to be shipped from the mine. When trips to the mine are necessary, the train is left at the junction or at Coalville on the so-called Park City line, with which the Grass Creek line connects, while a light engine goes up to the mine, shoving two or three empty cars ahead of it; then loaded coal cars are brought back ahead of the engine to the junction where they are run around to couple them up behind the engine for handling in connection with the other operations on the Park City line.

In *Union Pac. R. Co. Proposed Abandonment*, 189 I. C. C. 195, decided December 7, 1932, involving this line, we refused to issue a certificate which would become effective more than a year from its date, and because of the uncertainty regarding the length of time during which continued operation might be necessary we denied the application. No question was raised in that proceeding as to our jurisdiction.

There are no controlling facts shown in regard to the Grass Creek branch which distinguish or differentiate its purposes and uses from those of the Talbot branch. Therefore, notwithstanding the fact that we previously assumed jurisdiction in *Union Pac. R. Co. Proposed Abandonment*, *supra*, and in view of the decision of the Supreme Court in *United States v. State of Idaho*, *supra*, we now conclude that the Grass Creek branch is a spur within the meaning of section 1 (22) of the act and that we are without jurisdiction to authorize its abandonment. In view of this conclusion, discussion of the merits of the case is unnecessary.

The application will be dismissed by appropriate order.