

issued. It apparently relied upon the press release as the Commission's response to Mr. Marsh's telegrams and discontinued all four trains before the notice was issued.

Upon learning of Mr. Marsh's telegram to the members of the Commission and the Commission's apparent response to that telegram, I addressed and had hand delivered to Mr. Richard Block, Jr., Assistant Deputy Director, Section of Opinions, Interstate Commerce Commission, identical letters in each of the two cases challenging the action taken by the Santa Fe as being in violation of the explicit provisions of Section 13a(1) which state:

"A carrier * * * may * * * file with the Commission * * * notice at least thirty days in advance of any such proposed discontinuance or change. The carrier * * * filing such notice may discontinue * * * any such operation * * * pursuant to such notice except as otherwise ordered by the Commission pursuant to this paragraph, * * *."

I pointed out to Mr. Block that while Section 13a(1) may be liberal in its permissiveness to railroads to discontinue passenger service, there is a clear 30-day restriction on the discontinuance of that service. I stated that the restriction was for the protection of the traveling and shipping public and the employees and might not be changed by a railroad regardless of its knowledge of the intentions of the Commission with regard to entering upon an investigation of the discontinuance.

I wonder, for example, how many of the 37 passengers who rode trains 7 and 8 every day and the 66 passengers who rode trains 3 and 4 every day were left waiting at some desolate point between Chicago and Los Angeles or Kansas City and Gallup, New Mexico, for a train that they had been informed would not be discontinued until November 10. I don't suppose we will ever know how many of the 39,434 passengers carried annually by these trains were stranded by the Santa Fe's action, but the 30-day notice requirement obviously was intended to protect them from precisely what occurred to them when that notice requirement was violated by the Santa Fe railroad. A copy of my letter to Mr. Block of October 24, is attached as Appendix 4 to my statement.

When I had had no response to my letter by October 27, I addressed a telegram to each member of the Commission with a copy to Mr. Starr Thomas, Vice President-Law, Santa Fe. A copy of this telegram is attached to my statement as Appendix 5. In the telegram I pointed out that the principle involved was unique in the history of the administration of Section 13a (1) and would affect many, if not all, future passenger train discontinuances under those provisions. I also pointed out that the jobs of approximately 100 employees had been abolished without notice and that some crews had found themselves at the far end of their runs and had to wait until they could get transportation back to their home terminals. I also pointed out that I had contacted the Santa Fe with regard to the violation and the injury inflicted upon their employees but they had refused to do anything about it. In view of the fact that approximately 100 employees of the Santa Fe would very soon commence the irreversible process of exercising their seniority rights and displacing employees junior to them by virtue of the abolishment of the jobs on trains 7 and 8, I requested the full Commission to treat the matter as one of general transportation importance and order the Santa Fe "immediately to restore the operation of trains 7 and 8 and 3 and 4 and to re-post and re-file a proper 30-day notice with which Santa Fe shall comply."

On October 31, 1967, Division 3 of the Commission, issued the order which resulted in the passage of S. 2711. In that order Division 3 of the Commission held that the Santa Fe, by discontinuing the two pairs of trains prior to the expiration of the 30-day statutory period, had violated the provisions of Section 13a(1) and, in addition, had violated its own notices. But Division 3 then reached the startling conclusion that the railroad, by violating the law which the Commission is charged to administer, "vitiates" the Commission's jurisdiction. The two orders of Division 3, dated October 31, 1967, are attached to my statement as Appendices 6 and 7, respectively.

Immediately upon my receipt of this order on November 1, 1967, I forwarded a second telegram to each member of the Commission with a copy to Santa Fe Vice President-Law Thomas in which I pointed out that the action of Division 3 "would absolve the Commission of any responsibility to protect the public interest". I further pointed out that the jurisdiction of the Commission had been properly invoked by the Santa Fe when it filed its notices under Section 13a(1) and that the Santa Fe could not unilaterally and at its own convenience divest the Commission of jurisdiction by violating the law. My telegram further stated that once Commission jurisdiction properly attached as it had in these proceedings,