

"The carrier or carriers filing such notice may discontinue or change any such operation or service pursuant to such notice except as otherwise ordered by the Commission pursuant to this paragraph, the laws or constitution of any state, or decision or order of, or the pendency of any proceeding before, any court or state authority to the contrary notwithstanding."

As I noted above, the word "otherwise" was removed from that sentence and the word "not" inserted so that the sentence would read as follows:

"The carrier or carriers filing such notice may *not* discontinue or change any such operation or service pursuant to such notice except as ordered by the Commission pursuant to this paragraph * * *."

The effect of this change is to require the carrier to continue the operation of its trains until such time as it receives an affirmative order from the Commission permitting it to discontinue those trains. In short, the carrier could no longer "vitate" the Commission's jurisdiction by violating the provisions of the law which the Commission is charged to administer in the public interest.

The Report of the Senate Committee on Commerce describes the purpose of S. 2711 as follows:

"The provisions of this bill are designed to close a jurisdictional loophole in Section 13a(1) created as a result of a recent ICC decision involving removal of certain Santa Fe Railway Co. interstate passenger train service."

One might argue, in fact some have argued, that this is a tempest in a teapot because the trains involved could not have supported themselves once the Santa Fe had removed all mail revenue from them. I do not disagree with the probable inability of the public to prove under Section 13a(1) that the trains should have remained in service following removal of all mail revenue. Such an argument, however, misses the point. We are dealing here with an interpretation of a statute by the agency charged to administer that statute. That agency has held that when a carrier violates that statute the agency is helpless to do anything about it, indeed, the agency is removed from the scene by the very act of violation.

We could also argue as to whether the Commission's jurisdiction continues through the 30-day notice period. I am convinced that it does since the statute requires the carrier which files a notice with the Commission to comply with that notice by discontinuing the train on the date indicated in the notice and not before. Consequently, even if the Commission had no intention of investigating the particular discontinuance and communicates that intention with the public, the carrier is compelled to keep the trains on until the date indicated. During that time the Commission, as the agency charged with the responsibility of seeing to it that the carrier obeys the law during that period, has jurisdiction over that carrier with regard to the service of those trains. But arguments as to whether the Commission's jurisdiction continues throughout the 30 days are likewise irrelevant to the point under consideration. Quite obviously, whether or not the Commission has jurisdiction during that 30-day period, it *should* have jurisdiction during that 30-day period and *should* be able to require the carrier to obey the law. By violating the law, the carrier deprived the 104 passengers who rode those trains every day of train service without notice and it deprived approximately 100 employees of 21 days' wages. But much more important, it deprived the public of protection against violations of this federal law and, I respectfully submit, that must not be tolerated.

I notice that at the end of the Report of the Senate Committee on S. 2711, there is a statement to the effect that the bill arose out of the situation precipitated by the action of the Santa Fe and "is not intended to prejudice subsequent consideration of these other pending bills and measures" which would amend Section 13a of the Interstate Commerce Act. I do not know, of course, whether this Committee would approach this problem in the same manner. The Senate Committee has indicated it may report favorably other bills involving the amendment of Section 13a and consequently other matters with which the RLEA is vitally concerned might be disposed of in later bills. In the event this Committee is not of the mind to report out this bill and then later another bill amending section 13a, I would respectfully request this Committee to consider an amendment to S. 2711.

I would recommend that S. 2711 be amended by inserting in line 6, a comma after the word "not", by striking the word "and" immediately following the word "not", and by inserting after the word "otherwise" on line 7 the following clause: "and by inserting before the first comma the phrase 'upon such terms and conditions as in its judgment the public convenience and necessity may require'."