

APPENDIX 7

ORDER—OCTOBER 31, 1967

At a Session of the Interstate Commerce Commission, Division 3, acting as an Appellate Division, held at its office in Washington, D.C., on the 30th day of October, 1967.

(Finance Docket No. 24774)

ATCHISON, TOPEKA AND SANTA FE RAILWAY CO. DISCONTINUANCE OF TRAINS NOS. 7 AND 8 BETWEEN CHICAGO, ILL., AND LOS ANGELES AND BAKERSFIELD, CALIF.

Upon consideration of the matters in this proceeding, including the notice and supporting statement filed October 9, 1967, by the Atchison, Topeka and Santa Fe Railway Company under section 13a(1) of the Interstate Commerce Act proposing discontinuance, effective November 10, 1967, of its trains Nos. 7 and 8 between Chicago, Ill., and Los Angeles and Bakersfield, Calif.; the notice served October 20, 1967, by the Commission, Division 3, that it had concluded not to enter upon an investigation of the proposed discontinuance; protests by certain States, individuals, associations, and railway employees to the proposed discontinuance; and the letter of October 24, 1967, by the Railway Labor Executives' Association, treated as a petition for reconsideration of the notice served October 20, 1967, and stating that the subject trains were discontinued on October 19 or 20, 1967; and

It appearing, That section 13a(1) of the statute specifically prescribes that notice of a proposed discontinuance be properly posted and filed "at least thirty days in advance of any such proposed discontinuance or change" and that the carrier may discontinue or change any such operation or service "pursuant to such notice . . .";

It further appearing, That the discontinuance of the said trains by the Atchison, Topeka and Santa Fe Railway Company prior to the expiration of this 30-day period was a breach of its own notice and of this provision of the statute and therefore vitiates our jurisdiction in this matter;

It is ordered, That the notice and supporting data filed herein be, and they are hereby, dismissed for failure by the carrier to sustain the jurisdiction of this Commission.

By the Commission, Division 3, acting as an Appellate Division.

[SEAL]

H. NEIL GARSON, *Secretary*.

APPENDIX 8

[Telegram]

NOVEMBER 1, 1967.

By action of the Appellate Division 3 in its orders of October 31, 1967, the Commission has held the Santa Fe Railroad to be in violation of its own notices and in violation of the explicit requirements of section 13a(1) of the Interstate Commerce Act. But the Division 3 action would absolve the Commission of any responsibility to protect the public interest in this matter by absolving itself of jurisdiction in this case. We respectfully submit that the jurisdiction was properly invoked by the Santa Fe when it filed its notices under section 13a(1) and that railroad cannot unilaterally and at its own convenience divest the Commission of jurisdiction by violating the law.

We respectfully submit that once Commission jurisdiction properly attaches as in these proceedings it can be dissolved only in accordance with the terms of the statute. Since the statute requires 30 days' notice in advance of discontinuing and since the statute permits discontinuance automatically at the end of the 30-day period, the Commission is not required to act—even to the extent issuing a notice that it intends not to act—during the 30 days it has jurisdiction. However, during that 30 days the Commission is the sole agency with the responsibility of seeing to it that the railroad, under its jurisdiction obeys the law. If a violation of the law and the 30-day notice by premature discontinuance vitiates the jurisdiction of the Commission as held in the Commission's orders of October 31, then the law is rendered a nullity. A carrier could file its notice with the Commission and immediately discontinue its trains in violation of the law and the Commission would be without jurisdiction to compel obedience to the explicit requirements of the act.

Association respectfully requests the Commission to accept this telegram as an amendment to its telegraphic request for the full Commission to treat this matter