

January 16, 1950

Mr. I. Perle McBride
Railway Safety Inspector
Arizona Corporation Commission
Phoenix, Arizona

M/R

Dear Mr. McBride:

We have your letter of the 5th stating:

"A complaint has been submitted to this department by C. B. Simer, State Senator and State Legislative Representative, Brotherhood of Railroad Trainmen, charging the Santa Fe Railway Company with violation of the "Full Crew Law" by operating a Burro Crane on the Grand Canyon District without a Conductor and Brakeman. The following was submitted as evidence in the case.

"During the period June 27th to the last of August, Burro Crane 121 worked on Grand Canyon District without Conductor or Flagman to protest against regular or extra trains on Grand Canyon District. Mr. Shelton, Superintendent, contended the Grand Canyon District was dead track. However, on June 30th, 1949, extras 3884 and 3890 were held at Anita 30 minutes for the Burro to clear these extras at Apex. July 14th, 1949, train order 417 was addressed to C & E Eastward trains reading: "Approach gang between MP-53 and MP-54 prepared to stop unless proper proceed signal is received". A Mexican Flagman was flagging Burro Crane 121, which was changing out steel (rails).

Furthermore, a regular assigned work train was put on August 1, 1949, but still no flagman and Conductor were used on the Burro Crane."

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In addition to the information in your letter we are advised that a "burro crane" is a crane or hoist mounted on a railroad flat car and operated by an engine or motor driven by a petroleum product. The machinery has gears controlled by levers by which the power of the engine or motor may be engaged with the wheels on the flat car, and by the manipulation of the levers and gears the flat car bearing the crane may be moved along the railway tracks by the power generated by the motor or engine which operates the crane. To the flat car bearing the crane, there is attached one or more flat cars loaded with steel rails and equipment for use in laying and repairing railway tracks; the crane is used to lift these rails or equipment off and on the flatcars, and the crane, and attached car or cars are moved along the tracks by the engine or motor as the work being done, requires movement. You also advised the crane and the accompanying cars are used principally for track work, and that the movement along the track is only incidental to the work of repairing and maintaining railway tracks; that the crane and attached cars are not used to transport freight or passengers for hire. We are also advised that at times when the crane car and accompanying cars are moved along the tracks in the course of the work being done the company employees ride the crane and the cars attached to the crane.

The question to be determined is whether the burro crane, operated as above outlined, is a train within the meaning of the Arizona Full Crew Law (Section 69-121 ACA 1939). This section deals with several kinds of trains and motive power generally used by railroads in the ordinary course of its business in transporting freight or passengers, namely: (1) Single locomotive and accompanying tender, (2) Switch engines, (3) Passenger, mail or express trains, (4) Freight trains, (5) Local freight trains and

"All trains other than those described in the preceding portions of this act, when operated outside of the yard limits, shall be equipped with, and shall carry, a crew consisting of not less than one (1) engineer, one (1) fireman, one (1) conductor, one (1) flagman, and one (1) brakeman."

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This statute has been construed only once by our Supreme Court; that was as to whether a certain train was a local freight train or was in the class described as "other trains". Arizona Eastern Railroad v. State, 29 Ariz. 446, p. 870. That case is of no assistance in determining your question. The question we are confronted with is whether the burro crane as operated is in the class of "other trains". If the burro crane is one mentioned in the section above quoted, then it is required to carry a crew as prescribed by the statute.

The only decision we are able to find bearing upon the question before us is that of Mo. Kans. & Tex. Railroad v. State, 131 SW 2d 702. In that case the court described the mobile crane about as we here describe the burro crane. It appears from the facts in the Texas case that the crane moved along the railroad tracks some distance under its own power and would load and unload building material onto or off railway cars attached to the crane, and was used in track work. The railroad company did not equip the crane with the crew required by the Texas Full Crew Law. A proceeding was instituted against the company to recover a penalty prescribed by statute. The Texas statute is similar to ours. The court held the crane and its accompanying cars, operated as above stated, did not constitute a train and therefore the full crew law did not apply. In the opinion the court said:

"The record further discloses that this particular character of equipment was not in common use, if in use at all, in 1909 when the Legislature enacted the full crew law; and manifestly not in contemplation of the legislators when that statute was passed. It is also manifest, we think, that the Legislature in prescribing the crews required for the different kinds of trains named in the statute, used the term 'train' in its then understood meaning--that is, a series of cars drawn by a locomotive engine over the tracks of the railroad; or as indicating a transportation agency, one of the principal purposes of which was mobility of action over and upon the tracks of

the railroad. The term as then understood connoted, and still does for that matter, mobility over the railroad as one of its primary functions.

On the other hand, the equipment here involved, as above described, has for its primary purpose an entirely different purpose and function, is not to be deemed a carrier of freight or passengers, and its mobility under its own power is but incidental to the performance of the work for which it was designed and manufactured. * * *

In the case of United States v. Panhandle, etc. Railway Company, 21 Fed. Supp. 919, the court considered a case involving a power driven crane in an action brought under the safety appliance act of Congress. In that case the court held the crane was not a locomotive or train within the meaning of the act of Congress, but did hold the safety appliance act applied by reason of an amendment to the act which provides:

"Requirements relating to train brakes, automatic couplers, grab-irons * * * shall be held to apply to all train locomotives, tenders, cars and similar vehicles used in connection therewith."
(Emphasis Supplied)

Of like effect is, Hoffman v. NY NH & H Ry., 74 Fed. 2d 227.

After studying Section 69-121 and other legislation pertaining to railroading, passed about the time said section was enacted, we think it was the legislative intent the act should apply only to trains, as they were generally understood to be and were operated to haul freight or passengers on schedules, train orders or under similar circumstances and when the principal purpose or object to be accomplished was the movement of railroad freight, passengers and equipment along a railroad. We do not think said Section 69-121 applies to the operation of railroad equipment such as a burro crane, when the principal use of the crane was hoisting, lowering and handling materials in connection with track work, and the locomotion of the crane and accompanying cars was merely incidental to its main

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operation and use as a hoisting device. We do not think the legislative intent was to require the services of an engineer, fireman, conductor, flagman and brakeman on a crane such as you describe. If the services of any of these employees is required on such a crane, then all must be employed because the statute makes no exceptions. We can see where the services of a flagman may be necessary and proper for the safe operation of a burro crane, but that is a matter to be addressed to the legislative department. We can only interpret the law as passed.

In view of the authorities cited and the reasons above stated we do not believe the burro crane comes within the classification of other trains mentioned in Section 69-121.

In 1935 the legislature passed an act supplementing the Arizona Full Crew Law (Chapter 68) Sections 69-124--69-125, which sections define a locomotive and prescribe the required crew. These sections are as follows:

"69-124. Locomotive defined.--
The term 'locomotive' means any self-propelled unit operated by any form of energy or power, whether produced thereon or furnished from any outside source, and adapted for use in moving cars upon rails, or for the transportation of passengers and/or freight or property upon rails."

"69-125. Crew on locomotives propelled by motive power other than steam.--Any locomotive propelled by any motive power other than steam, when propelling or moving itself and not more than one (1) car or coach, shall be equipped with, and shall carry, a crew consisting of not less than one (1) engineer and one (1) fireman as a second man on other than steam locomotives to assist the engineer in the performance of his duties; provided, that the provisions of this act shall not apply to any such locomotive unless the same is being

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used for the purpose of transporting passengers and/or freight or property for hire, nor shall the provisions hereof apply to electric street railway cars if such electric street railway cars are operated at least partly within the limits of any incorporated city or town of the state."

If any section of the Full Crew Law applies to burro cranes, it is the section last mentioned; however, said Section 69-125 is not applicable to the instant case, because of the exception contained therein, which is that the act shall not apply unless the equipment is used for transporting passengers or freight for hire.

In view of what we have said here, we do not believe the railway company could be successfully prosecuted for a violation of the Arizona full crew law under the facts outlined to us.

Yours very truly,

FRED O. WILSON
Attorney General

EARL ANDERSON
Assistant Attorney General

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