

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

United Transportation Union – Illinois
Legislative Board,

Complainant,

vs.

Docket No. T04-0027

Kansas City Southern Railroad,

Respondent.

Complaint as to inadequate locker rooms,
restrooms, washing facilities, showers,
dressing rooms and cleanliness and general
maintenance at railyard facilities at the
St. Louis yard in East St. Louis, Illinois.

**BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

Pursuant to 83 Ill. Adm. Code 200.800, the Staff of the Illinois Commerce Commission (“Staff”), by and through its attorney, hereby submit a post-hearing Brief in the above captioned matter.

I. Introduction

On March 22, 2004, the United Transportation Union (“UTU”) filed with the Illinois Commerce Commission (“Commission”) a complaint alleging that the switching yard shelter facility at the Kansas City Southern Railway (“KCS”) yard located in East St. Louis, Illinois was inadequate and, thus, in violation of 92 Ill. Adm. Code 1545 (“Part 1545”). Specifically, the complaint alleged:

1. restroom did not have adequate ventilation, lighting, or supply of toilet paper;
2. the washing facility at the location was not kept in a sanitary condition, did not have water, an adequate supply of paper towels, waste receptacles,

- or soap provided for the employees and overall did not have adequate supplies provided for the employees;
3. the shower facility did not have ample supply of hot water;
 4. the locker room at the facility did not have the required square footage per locker nor did it have adequate tables and benches for the employees to utilize in changing, nor adequate lighting and ventilation;
 5. there was no locker room facility for the women using the facility;
 6. the employee lunchroom did not have adequate ventilation, heating, waste receptacles, nor was it kept in an overall sanitary condition;
 7. the overall cleanliness and maintenance of the facility was lacking;
 8. the facility was neither designed nor arranged in a manner to make its functionality and utilization convenient for the use of employees.

(UTU Formal Complaint, pp. 2-3.)

The Formal Complaint was the result of unsuccessful efforts on the part of both the UTU and Staff to persuade the KCS to make the facility fully compliant. In order for a complete understanding of the sequence of events it is important to briefly describe the informal steps that were taken to try to bring the facility into compliance.

Until approximately October 15, 2003, an employee facility was in place at the East St. Louis yard. (Tr., p. 15, line 18 – p. 17, line 10.) In mid-October 2003, that facility was demolished by the KCS. (Id., at p. 17, lines 14-21.) In early November 2003, a trailer began being used as the employee facility. (Tr., p. 19, lines 17-21; UTU Group Exhibit 1H.) From the time the old facility was torn down until approximately one month later, the trailer facility was not operational. (Tr., p. 17, lines 19-21.) During periods of that time, there was no running water, electricity, operating showers, toilets, or sinks. Tr., p. 20, lines 6-15.)

In November 2003, Joseph Szabo (“Szabo”), State Legislative Director for the UTU, received a complaint from Robert Gore, Vice Local Chairman for UTU #1929, regarding inadequate condition of the replacement KCS trailer facility (hereinafter “facility”). (UTU Exhibit 3.) On November 10, 2003, Szabo, in turn, sent a letter to Michael Stead (“Stead”), Rail Safety Program Administrator with the Commission, asking that an inspection of the facility be

conducted. (Id.) On November 11, 2003, Robert Wagoner (“Wagoner”), Operating Practices Specialist for the Commission, conducted an inspection of the facility and numerous violations of Part 1545 were discovered. (UTU Exhibit 6.) On December 12, 2003, as a result of Wagoner’s inspection, Stead notified the KCS of deficiencies with the facility and requested that repairs and/or improvements be made. (Id.) On January 13, 2004, Wagoner conducted a second inspection and found some of the same problems present as during the first inspection. (UTU Exhibits 6, 9.) In addition, during the January inspection there was a water leak that allowed water to accumulate on the floor of the facility. (UTU Group Exhibit 2H.) On February 18, 2004, the KCS responded to Stead’s January 23rd letter. In its letter, the KCS admitted that it had “recently undertaken significant expense to eliminate several older buildings and provide our crews with a more modern, brighter working environment.” (UTU Exhibit 11.) On March 4, 2004, Stead responded to the KCS letter acknowledging that the railroad had made progress in addressing the deficiencies noted during the January 13, 2004 inspection; however, in order to follow-up, Stead noted that a third inspection would take place in early April 2003.¹

On April 13, 2003, Wagoner conducted his third inspection of the facility. As a result, Stead send a letter to the KCS on April 19, 2003, noting that based on the inspection, it was Staff’s position that the following items still needed to be remedied in order to comply with Part 1545:

1. locker room did not meet floor space requirements;
2. each locker room in the facility needed to meet the square footage requirements;
3. facility did not have a shower for female employees;
4. facility did not have proper ventilation in the lunchroom, nor were there tables and chairs in the lunch room for employees to use while eating;
5. ventilation fan was not working in the restroom.

¹ Between the time that Stead responded to the KCS in his March 4, 2004 letter and another inspection was conducted on April 13, 2004, the UTU filed its Formal Complaint with the Commission.

On July 27, 2004, Wagoner conducted another inspection. As a result of that inspection Staff concluded the only items that still needed remedied by KCS was the locker room square footage, lunchroom ventilation and female employee shower facility².

As a result of the Formal Complaint being filed, on July 28, 2004 and August 25, 2004, evidentiary hearings were held at the Commission's Springfield Office. At these hearings, counsel for the UTU, KCS, and Staff entered appearances. Testifying on behalf of the UTU were Donny Eddy, a Conductor with the KCS and local chairman for the UTU; John Burner, Assistant State Director for the UTU; and Joseph Szabo. On behalf of the KCS, Gregory Haney, Trainmaster, testified. Robert Wagoner was called as a witness by the UTU.

II. Legal Standards

According to 92 Ill. Adm. Code 1545.20, each rail carrier is responsible for providing and maintaining for its employees, sanitation and shelter. Specifically, the Illinois Administrative Code requires:

Section 1545.140 Locker Rooms

- a) Locker rooms, except those in camp cars, shall have not less than eighty square feet of floor space for the first ten employees, or fraction thereof, and for each additional employee not less than four additional square feet shall be added thereto. Employees, as used herein, refers to employees to whom lockers have been assigned.
- b) Necessary furniture such as benches and tables shall be provided.
- c) Such locker rooms shall be properly lighted, heated and ventilated at all times.

Section 1545.230 Cleanliness and Maintenance

- a) Frequency of regular and thorough cleaning will be determined in each case by the amount of traffic; and, in all instances, the frequency of cleaning shall be adequate.

² During cross-examination at the July 28, 2004, hearing Wagoner admitted that the Commission's rules do not require a separate shower facility for female employees. As such that issue is not addressed in this Brief.

- b) Toilets and washrooms shall not be used for storage. Fixtures are to be maintained in proper working order at all times.
- c) Floors shall be maintained in a clean and, so far as practicable, dry condition at all times. Where wet processes are used, drainage shall be maintained and false floors, platforms, mats or other dry standing places shall be provided whenever practicable.

Section 1545.210 Lunch Rooms

- a) General Requirements:
When a lunch room is provided by the company, it shall be adequately ventilated, reasonably heated, properly screened, provided with the necessary covered receptacles for the disposal of waste matter and shall be kept clean and in good care.

III. Argument

A. The East St. Louis facility lacks adequate locker room space.

Per Section 1545.140, locker rooms are required to have eighty square feet of floor space for the first ten employees and four additional square feet for each additional employee. (92 Ill. Adm. Code 1545.140.) It is Staff's position that there are two locker rooms in the facility not just one. In addition, Staff maintains that the square footage requirement should be based on the number of employee lockers contained in any given locker room. Each of these issues will be addressed separately.

As for the number of locker rooms, it is clear from photographs introduced into the record that there are two separate and distinct locker rooms. (See UTU Group Exhibits 2B, 2E; Respondent's Exhibits 1, 3.) As Respondent's Exhibits 1 and 3 illustrate, the locker rooms have a floor to ceiling wall dividing them from one another and a doorway in between the rooms. The KCS will unconvincingly argue that since the door has been removed from the hinges these two rooms have been magically transformed into a single room. The Commission should not accept that position. It is clear from looking at photographs and diagrams introduced into evidence, there are two locker rooms. The removal of a door does not change the fact that in the facility

there is clearly a center locker room and an end locker room. Staff contends that for purposes of square footage calculations, each room must be calculated separately:

Center Locker Room

Number of lockers: 44

Calculation: 10 lockers X 8 ft² = 80 ft²

34 lockers X 4 ft² = 136 ft²

Total square footage required: 216 ft²

Amount of square footage present: 208.25 ft²

(Source: Respondent's Exhibit 7)

Amount that center locker room is deficient:

216 ft² - 208.25 ft² = 7.75 ft²

End Locker Room

Number of lockers: 18

Calculation: 10 lockers X 8 ft² = 80 ft²

8 lockers X 4 ft² = 32 ft²

Total square footage required: 132 ft²

Amount of square footage present = 92.75 ft²

(Source: Respondent's Exhibit 7)

Amount that end locker room is deficient:

132 ft² - 92.75 ft² = 19.25 ft²

As the calculations above show, the facility is deficient in both locker rooms for the requisite amount of square footage required by Section 1545.140. It is Staff's position that KCS be ordered by the Commission to provide adequate locker room facilities for its employees based on the calculations noted above. If the current facility cannot be configured to meet the requirements of Section 1545.140, the KCS should be ordered to construct a new facility in order to comply with the law.

The other locker room issue raised during this litigation centers on whether the lockers are "assigned." Section 1545.140 states that the square footage requirements are based on the number of employees and "employee" refers to "employees to whom lockers have been

assigned.” (92 Ill. Adm. Code 1545.140(a).) The KCS contends that since none of the lockers are assigned to a particular employee the square footage requirements are inapplicable. The argument overlooks the intent of the rule. It is clear from a plain reading of the rule that the intention was to ensure that there is adequate space in locker rooms. The fact that Employee A is not assigned Locker #1 does not change the intent of the law. Employee A should have adequate space to change his clothes, tie his shoes or store his gear. Taken to its illogical extreme, KCS’ position would allow the placement of lockers so close to one another that they could not be opened but claim that there is sufficient square footage since they are not assigned to a specific employee. Conversely, that position would allow having only one locker for 100 employees yet claiming to meet the square footage requirements since that locker had not been “assigned.” Such a position is nonsense and should be disregarded by the Commission.

It is Staff’s position that the facility does not comply with the square footage requirements of Section 1545.170 and that the KCS be ordered to reconfigure the existing locker rooms in such a way that they comply with the law, or in the alternative, construct a new facility for the employees.

B. The East St. Louis facility does not provide adequate ventilation in the lunchrooms.

Section 1545.110 requires that lunchrooms be adequately ventilated. (92 Ill. Adm. Code 1545.110.) The evidence at hearing indicated that the KCS has two locations where employees take a lunch period and breaks during the day and neither one of them were adequately ventilated. On cross-examination, the KCS seemed to suggest that simply operating the fan on the facilities’ heating and air conditioning system would adequately vent the lunch rooms. However, no testimony was introduced from an expert witness whether adequate ventilation was possible given the facilities’ configuration. Therefore, KCS’s position is unsupported by the

record and should be disregarded. The KCS is also of the opinion that simply opening a window can adequately ventilate the facility. That approach may be palatable during the handful of days where weather permits but during the dead of winter or blistering heat of summer, the KCS's suggestion is implausible.

Section 1545.210 requires proper ventilation in all eating areas. Staff recommends to the Commission that the KCS be ordered to install operating ventilation fans in all of its facilities that are used as lunchrooms.

C. The Kansas City Southern Railway failed to provide adequate facilities for its employees.

While the KCS has made improvements in the condition of the facility since the time it was installed in November 2003, the facts remains that for a period of approximately 1 month there was no facility in place and that for a period of time even after the facility was open for use it was in such poor condition that it was unusable for its intended purpose. The employees deserve better.

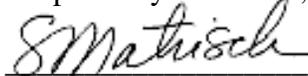
On cross-examination, KCS Trainmaster Haney admitted that a facility without hot water, without working toilets, without toilet paper, with a lunchroom filled with empty boxes, with an unclean toilet and sink, and with leaky toilets would be an inadequate facility. (Tr., p. 534, line 22 – p. 537, line 8.) All of these conditions existed at the East St. Louis facility. (UTU Exhibits 3, 5, 6, 7, 9, 10, 12, 14; UTU Group Exhibit 1A-L; UTU Group Exhibit 2A-J.) Thus, by its own admission, KCS provided a facility that is inadequate for its employees.

Staff recommends that the Commission order periodic inspections of the KCS East St. Louis yard facilities in order to monitor compliance with 92 Ill. Adm. Code 1545.

IV. Conclusion

The Kansas City Southern Railway has violated the Illinois Administrative Code regarding the provision of clean, sanitary and adequate facilities for railroad employees. During a period of time between October 2003 and April 2004, the employees endured deplorable conditions: inoperable toilets, no running water, a lunchroom without tables or chairs, inadequate supplies of soap, towels and toilet paper, no hot water, inadequate locker room space, and improper ventilation. As a result of these conditions, it is Staff's position that the KCS be ordered to remedy the outstanding deficiencies identified, *supra*, and to direct the periodic inspections of the facilities. After conducting these periodic inspections if conditions are found which violate the law, Staff maintains that a recommendation be made to the Commission that a citation order be entered for the purposes of imposing civil penalties against the KCS to the full extent permitted by the law.

Respectfully submitted,



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