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Colorado & S. Ry. Co. v. District Court In and For Tenth Judicial Dist.

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IN THE SUPREME COURT OF THE STATE OF COLORADO

THE COLORADO AND SOUTHERN RAILWAY
COMPANY, INC. and the ATCHISON
TOPEKA AND SANTA FE RAILWAY
COMPANY a/k/a SANTA FE RAILWAY
COMPANY, a corporation,

Petitioners,

25392 vs.

THE DISTRICT COURT IN AND FOR THE
TENTH JUDICIAL DISTRICT OF THE
STATE OF COLORADO; HONORABLE S.
PHILIP CABIBI, DISTRICT JUDGE IN
AND FOR THE TENTH JUDICIAL DISTRICT
STATE OF COLORADO; THE COLORADO AND
WYOMING RAILWAY COMPANY, INC.;
CF&I STEEL CORPORATION, a corporation;
MARINE MIDLAND BANK-NEW YORK and
MILTON G. JANACEK as TRUSTEES
UNDER A CERTAIN INDENTURE FOR THE
USE AND BENEFIT OF BOND HOLDERS OF
CF&I STEEL CORPORATION, a
corporation,

Respondents.

MOTION TO SHORTEN
TIME PERIODS FOR
ANSWER OF RESPONDENTS
AND REPLY OF
PETITIONERS.

FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO

DEC 21 1971

Richard D. Turelli

Respondents, S. Philip Cabibi and The Colorado and Wyoming
Railway Company, by their attorneys, move this Court to shorten
the time periods specified in the Rule to Show Cause for the
answer of Respondents and for the reply of Petitioners from 20 days
to 7 days so that the answer of Respondents will be due on
December 24, 1971, and the reply of Petitioners will be due on
December 31, 1971. (The other Respondents did not appear in
the proceeding below.) As grounds for this motion, Respondents
state:

1. The issues raised by the Petition herein were
fully testified to, briefed and argued by the real parties in
interest in and before the District Court in and for the Tenth
Judicial District, Honorable S. Philip Cabibi presiding. The
hearing in said court consumed all or part of three different
days and in effect amounted to a full trial of said issues and
the other basic issues raised by the Petitioners' motions to
dismiss which are exhibits B and C to the Petition herein.

Furthermore, the Petitioners have submitted their case in the petition itself, and, therefore, do not need an extensive period of time to reply to Respondents' answer.

2. The United States Court of Appeals for the Tenth Circuit recognized the urgency of the matter of the construction of the railroad track in question when it entered the stay of preliminary injunction, a copy of which is attached as Exhibit 1 to the Motion to Dismiss filed on December 17, 1971 herein. The construction of said track is referred to in the Petition herein and the railroad crossing which is the subject of the proceeding before Judge Cabibi is an essential element in the completion of the construction. So that said construction may be completed as soon as possible, it is vital that the Respondent, The Colorado & Wyoming Railway Company, have a ruling on the question of possession so that it may submit the matter to the Public Utilities Commission of the State of Colorado.

3. As stated in the documents attached to the Petition herein, the railroad track in question is to serve the new Comanche Plant of the Public Service Company of Colorado, and it is in the interest of that service that the issues involved in the proceeding before Judge Cabibi and the proceeding now before this Court be resolved at the earliest possible date. At the present time no rail service to Comanche Plant exists.

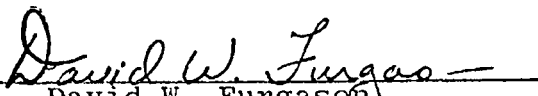
4. Respondent, The Colorado & Wyoming Railway Company, is prepared to go to the Public Utilities Commission of the State of Colorado for the purpose of obtaining its direction and approval with respect to the cross-over of the tracks of the Petitioners, but before doing so The Colorado & Wyoming Railway Company under the authority of this Court in Miller v. Public Service Company of Colorado, 129 Colo. 513, 272 P.2d 283 (1954) must have at least a possessory interest in the land at the point of the proposed crossing.

WHEREFORE, Respondents respectfully move this Court to shorten the time periods for the answer to the Rule to Show Cause and the reply to the answer so that said answer will be due on December 24, 1971, and said reply will be due on December 31, 1971, and to set this matter for oral argument as soon thereafter as is convenient to the Court.

Respectfully submitted,

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