

ILLINOIS POLLUTION CONTROL BOARD
May 10, 1973

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
V.) PCB 72-155
)
ILLINOIS CENTRAL RAILROAD COMPANY,)
)
Respondent.)

Delbert Haschemeyer, Assistant Attorney General, on behalf of
Complainant;
Joseph W. Phebus on behalf of Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Seaman):

Complaint was filed by the Agency against Respondent, Illinois Central Railroad Company, on April 14, 1972. The complaint alleged that on August 4, 1971, Respondent caused, threatened or allowed the open burning of railroad ties and/or other refuse so as to cause or tend to cause air pollution in Illinois in violation of Section 9(a) and 9(c) of the Environmental Protection Act.

Respondent moved to dismiss, which motion was denied, and has not filed an answer to the complaint. Therefore, this action will be decided upon the allegations of the Agency complaint, the record of the hearing held February 22, 1972, and the exhibits admitted therein.

Injunction had been issued against the Respondent in the Circuit Court of Champaign County enjoining the Respondent from "knowingly, intentionally and willfully burning railroad ties". The alleged burning incident, which is the subject of the present complaint, was asserted in the Champaign Circuit Court as constituting a violation of said injunction based on a complaint and petition for rule to show cause. On March 30, 1972, an Order was entered on that petition in favor of Respondent, herein, and the rule to show cause discharged.

The violation of the injunction required a finding of willfull action whereas the complaint in the instant case requires only a demonstration that the alleged open burning of ties was threatened or allowed by Respondent. To threaten or allow open burning of ties is sufficient to constitute violation of the Environmental Protection Act, Section 9(a).

From the record, it is undisputed that on August 4, 1972, several piles of railroad ties, located immediately adjacent to Respondent's railroad tracks, burned between 9:30 a.m. and 4:25 p.m. It is also undisputed that two of Respondent's employees (Joseph Russell Madia, freight car inspector, and Wilbur Aaron Tauber, extra yardmaster) were notified of the fires, witnessed same, and took no steps to extinguish the burning ties (R. 11, 21).

It is not necessary in this fact situation for the Board to inquire into the origin of the fires, nor has either party offered convincing evidence pertinent thereto.

The Board is satisfied that several piles of ties burned on Respondent's property, that Respondent was aware of the situation, and that Respondent made no effort to correct the violation. Respondent is therefore found to have violated Section 9(a) of the Environmental Protection Act for which Respondent is ordered to pay a fine in the amount of \$200.

ORDER

Illinois Central Railroad Company shall pay to the State of Illinois the sum of \$200 within 35 days of the date of this Order. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was adopted by the Board on the 17th day of May, 1973, by a vote of to .

Christan L. Moffett