Decision No. 11788

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

Western Meat Company, a Corporation, Complainant,
vs.
Southern Pacific Company, et al., Defendants.
CASE NO. 1671.

Miller & Lux, a Corporation, Complainant,
vs.
Southern Pacific Company, Defendant.
CASE NO. 1686.

Virden Packing Company, a Corporation, Complainant,
vs.
Southern Pacific Company, Defendant.
CASE NO. 1784.

Sanborn & Roehl and R. D. Rynder, for Western Meat Company.
G. C. Larkin, for Miller & Lux,
F. F. Atkinson, for Virden Packing Company.
R. C. Dearborn, for National Perishable Freight Committee.
Geo. J. Bradley, for Chas. C. Swanston & Son, Interveners.
Elmer Westlake, for Southern Pacific Company.
B. Levy and Geo. H. Nelson, for Atchison, Topeka & Santa Fe Ry. Co.
H. C. Bush, for Western Classification Committee.

BY THE COMMISSION:

O P I N I O N

These cases present like issues, were consolidated for hearing and will be disposed of in the one report.

The complaints were filed September 27, 1921, October 26, 1921 and July 1, 1922, and the original complaint in Case No. 1671

was amended March 8, 1922.

The pleadings put in issue the refrigeration charges assessed by defendants against carloads of meat, etc. originally iced by consignors and not re-iced in transit.

Since the allegations in the three proceedings are similar we will deal mainly with Case 1671, of the Western Meat Company, which complainant presented all of the exhibits and the major part of the testimony. The complaint alleges:

(a) That the refrigeration charges assessed in connection with shipments originally iced by the shipper with instructions "Do not Re-Ice" are unjust, unreasonable and excessive in violation of Section 13 of the Public Utilities Act, and unlawful in violation of Sections 17, 30, 61 and 63 of the Act and of Section 20, Article XII, of the Constitution of the State of California.

(b) That during the period March 1 to June 30, 1920 defendants transported carload shipments of meat and packing house products originally iced by the shipper with orders not to re-ice in transit, against which no charge, in addition to the transportation charge, was demanded or collected.

(c) That since July 1, 1920 there have been assessed and demanded refrigeration charges under Item 240 of Perishable Protective Tariff No. 1, C.R.C. No. 5, issued by J.E. Fairbanks, Agent, effective February 28, 1920.

(d) That the provisions of Item 240 of the Fairbanks Tariff were not lawfully applicable to complainants shipments within California.

(e) That if the provisions of Item 240 were applicable the charges would be unjust and unreasonable, and result in the imposition of unjust, unreasonable and excessive charges.

(f) That during the period of Federal control and at all times prior to July 1, 1920, no refrigeration charges were assessed.

(g) That defendants at no time made a satisfactory showing that there had been any change in circumstances and conditions justifying a charge for a refrigeration service in addition to the regular transportation rates.

(h) That the defendants be required to cease and desist from demanding and collecting any refrigeration charges when shipments are initially iced by shipper and not re-iced in transit; that an award of reparation be entered against defendants for any refrigeration charges collected and that any refrigeration charges assessed and not collected be cancelled.

A hearing was held before Examiner Coary, in San Francisco, on July 10 and 11, briefs have been filed, the last one on January 10, 1923, and the matter is now ready for an opinion and order.

The main issues involved in these proceedings have been the subject matter for investigation by the Commission at various times and a brief resume of the conclusions arrived at follow:

In Application No. 1878 (9 C.R.C. 334) decided March 14, 1916, the Southern Pacific Company sought permission to cancel reference note in S.P. C.R.C. No. 1632 in connection with rates on packing house products from South San Francisco to San Francisco, reading:

"Will apply on shipments under ice in refrigerator cars, but does not include cost of refrigeration. Exception to Rule 13 of Tariff."

Rule 13 of Tariff reads:

"Rates named in this tariff do not include charge for refrigeration of freight. Refrigeration being a special service separate and distinct from transportation, the charge made for refrigeration is in addition to the transportation rates named herein. See S.P.Co's Local and Joint Refrigeration Tariff No. 810, (C.R.C. No. 1847) supplements thereto and re-issues thereof, for refrigeration charges on shipments handled via the lines of this company."

In view of the outstanding fact that the cancellation of this note would increase the transportation charges on packing house products from $5.00 to $10.00 per car, the Commission denied the application without prejudice.

In Case No. 997 (12 C.R.C. 590) decided February 21, 1917,

C.Swanston & Son, shippers of packing house products, located at Sacramento, brought a complaint against the Southern Pacific Company alleging that prior to March 15,1915 they had transported fresh meats in carload lots from Sacramento to Stockton, San Francisco and Oakland in refrigerator cars,initially iced by shippers and without re-icing being necessary on route, at the freight rate, no charge having been assessed in addition thereto account shipments moving in iced refrigerator cars; that subsequent to March 15,1915 to the time the complaint was brought, defendant assessed, in addition to the freight rate, a charge of $5.00 per car on fresh meats moving under refrigeration initially iced by complainant and not re-iced.

In its finding for the complainant the Commission, in part, said:

> "In view of the fact that these shipments had universally been moving under ice, mixed with salt, for a number of years prior to the establishment of the third class rate now under consideration, and giving due consideration to all the other circumstances of this case, we find that any charges which defendant was entitled to make either for damage to its cars from ice or salt or for cost of hauling the ice or extra switching and inspection should have been and presumably were, taken into consideration when the $3.60 and $1.80 rates were established by defendant.
> "It is our opinion that defendant has failed to establish the fact that it has rendered a refrigeration service on these shipments for which it is entitled to additional compensation". (page 597).
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> "Defendant should so amend its Refrigeration Tariff 810 as to make it perfectly clear that the refrigeration rates named therein are not applicable to shipments pre-iced by shippers and not re-iced in transit, moving under Rule 29 of the Western Classification".)page 598).

In Application No. 2628 (13,C R.C.18,April 7,1917) the Southern Pacific Company again applied for authority to cancel reference note carried in its Tariff 730, C.R.C. 1632. That application was granted, with instructions that Rule 29 of Western Classification would apply, the holdings being similar to those in Case 997.

In Case 997 the Commission also held that the evidence submitted by carriers of damages to bunkers was insufficient to show that any heavy damages could result, owing to the fact that the ice used was broken into pieces and then fed into the bunkers by means of a chute, thus eliminating all damage other than the ordinary wear and tear to the equipment.

The packing plant at South San Francisco was originally established in 1892 by the South San Francisco Land & Improvement Company, the predecessor of the Western Meat Company. What the first rate was is not of record, but there was a rate of 50 cents per ton January 1, 1906, Tariff 16 Y, C.R.C.84. The total revenue accruing to the defendant under that tariff, on the basis of a minimum weight of 20,000 pounds, was $5.00 per car. The rate of 50 cents per ton, without additional charge for refrigeration when iced by the shipper, remained in effect until June 28, 1918, when by General Order No.28 of the Director General of Railroads, it was increased to 60 cents per ton, and the minimum charge increased from $5.00 to $6.00. The rate of 3 cents per 100 pounds, or 60 cents per ton, was increased August 26, 1920 (Ex parte 74) to 4 cents per 100 pounds, or to 80 cents per ton and the minimum charge per car from $6.00 to $8.00. The rate of 4 cents per 100 pounds remained in effect until July 11, 1921, when all class and commodity rates between San Francisco and South San Francisco were cancelled and the San Francisco switching limits were extended to include South San Francisco, thereby reducing the rate of 4 cents per 100 pounds, applicable to meat and packing house products, to 50 cents per ton, with a minimum of $12.00. This reduction was brought about by our Decision May 12,1921 in Application No.6390 (19,C.R.C.856). On July 1, 1922 practically all rates were reduced by 10 per cent (I.C.C. Reduced Rates 1922), making the present rate on packing house products between South San Francisco and San Francisco 45 cents per ton,

minimum charge $11.00 per car.

On shipments of fresh meat and packing house products from Sacramento, the conditions surrounding the transportation to San Francisco, Oakland, Stockton, etc., are identical with those from South San Francisco insofar as pre-icing by shippers is concerned.

In the instant proceedings the complainants presented eight exhibits, the defendants seven, and both sides argued the case in printed briefs. Complainants, in addition to the testimony of their local traffic managers, had as one of their witnesses the traffic director of Swift & Company, Chicago, while the defendants, in addition to their local officials, presented as witnesses a member of the Western Classification Committee, the Chairman of the National Perishable Fruit Committee and the Manager of the Refrigerator Department of the Atchison,Topeka & Santa Fe Railway, the last three witnesses coming from Chicago. Every angle of the case was presented in a clear and most satisfactory manner by both sides.

Perishable Protective Tariff No.1, C.R.C.No.8, became effective February 28, 1920, the day before Federal control terminated, and provides in Section 2, by tables 7 to 12 inclusive, the stated refrigeration charges from points in California to interstate points and between points within California. The charges are segregated as between the different commodities, the only part involved in this proceeding being under the caption -

"Column 4 - Vegetables (except melons); also Perishable Freight not otherwise indexed by name.
Governed by Rules Nos. 200 to 240 inclusive".

It is the contention of complainants that the words "perishable freight not otherwise indexed by name" are not applicable to fresh meats and packing house products; that Rule 240 does not apply and, therefore, all refrigeration charges assessed against shipments of these commodities are unlawful and where collected

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reparation should be made, and where charged and not collected should be cancelled. Defendants take the position that Rule 240 does apply and that the accessory charges are correct in connection with the cars initially iced by shipper with instructions "Do not re-ice". It is significant, however, that notwithstanding the tariff became effective February 28,1920 no effort was made to apply Rule 240 to fresh meat and packing house products until about July 1, 1920, or after a lapse of four months. The record further shows that the agent of the Southern Pacific Company at San Jose did, on December 7, 1921, refund to the Western Meat Company $25.00 against five cars forwarded from South San Francisco to San Jose in July and August, 1921. This would indicate that neither the traffic department nor the local agents were convinced that Rule 240 of the tariff actually applies to meat and packing house products.

Complainants' Exhibit No.6 gives an analysis of the rates applying to perishable commodities moving less than carload, with the rates assessed against fresh meats in carloads. Without going into the details of this Exhibit it is sufficient to note that in the territory where less than carload rates are in effect for cars initially iced by the carriers the total charges are lower than are the charges against fresh meats in cars initially iced by shippers.

The testimony here, as in previous cases, showed that ice in a crushed form is delivered to the bunkers through a chute, eliminating to a great extent damage to the bunkers which the carriers assume when the ice is handled in standard size blocks, as is the practice in connection with fruits, vegetables and other commodities. In addition to this refrigeration service shippers are required, after each trip, to put the cars through a

thorough steam cleaning process, taking from one to two hours to perform. It will thus be seen that practically all expenses of cleaning and refrigerating the cars are furnished by the shippers.

In the two proceedings decided by this Commission and already referred to - Application No. 1878 (9,C.R.C.334) and Case No. 997 (12,C.R.C.590), we took the position that the freight rates as originally established included the refrigeration. Prior to June 25,1918 the charge for fresh meat and packing house products from South San Francisco to San Francisco was 50 cents per ton, with a minimum of $5.00 per car. That rate was changed during the war period by increases and decreases and today is fixed at 45 cents per ton, with a minimum of $11.00 per car and since in almost every instance the shipments loaded at South San Francisco are subject to the minimum charge the revenue to the carrier has increased from $5.00 to $11.00, or 120 per cent. The rate between San Francisco and Sacramento was originally $3.60 and of date is $5.00, an increase of 40 per cent.

Rule 240, Perishable Protective Tariff No.1, as published is intended to apply to fresh meat and packing house products within but six States, namely; Oregon, Washington, Arizona, Nevada, Idaho and California, but the testimony would indicate that the rule has not been uniformly enforced.In Oregon, and especially between North Portland and Portland, where the movement is constant and somewhat similar to that between South San Francisco and San Francisco the additional charge has never been assessed. Attention may also be directed to the fact that similar shipments moving from Ogden, Salt Lake,Utah and from Missouri River points to California competitive with the traffic moving within the State of California are not under the provisions of the rule. It would, therefore, appear that a discriminatory situation is created by the accessorial charge under Rule 240 within the State of California which is not applied

at competitive points.

After giving consideration to all of the testimony, exhibits and briefs, and basing our conclusion upon the fact that the shippers of fresh meat clean the cars, furnish the crushed ice and the salt, load them into the bunkers, and the further fact that this and the previous investigations clearly show that the rates as originally published included the refrigeration service, we are of the opinion and find that the imposition of the charges under Rule 240 results in discrimination against the California shippers, also creates excessive and unreasonable charges, and that Perishable Protective Tariff No.1, Cal.R.C.No.5 should be amended eliminating fresh meats and packing house products from the application of Rule No.240.

We further conclude and order that these defendants be required to refund any charges actually collected under the provisions of Rule 240 and where the charges have been assessed and not collected that the bills be cancelled.

O R D E R

These cases being at issue upon complaints and answers on file, having been duly heard and submitted by the parties, full investigation of the matters and things involved having been had, and being fully apprised in the premises, the Commission hereby finds as a fact.

That the application of Rule No.240 of Perishable Protective Tariff No.1, Cal.R.C.No.5, against fresh meats and packing house products, when initially iced by shipper under instructions "Do not re-ice", imposes unjust, unreasonable and discriminatory charges, and basing its order upon the above findings of fact and the further findings of fact in the opinion hereto,

IT IS HEREBY ORDERED that the defendants in this proceeding be, and they are hereby notified to cease and desist on or before May 13, 1923, and thereafter to abstain from publishing, demanding or collecting any charges under the provisions of Rule No. 240 of Perishable Protective Tariff No.1, Cal.R.C.No.5, against shipments of fresh meats and packing house products initially iced by shippers and not re-iced in transit.

IT IS HEREBY FURTHER ORDERED that the defendants, according as they participate in the transportation, make reparation refunds, with interest, of all amounts collected by application of Rule 240 and where freight bills have been rendered and not paid that such bills be cancelled.

IT IS HEREBY FURTHER ORDERED that if the defendants and the complainants cannot agree upon the amount of the refunds due under this order, said parties, or either of them, may appear before this Commission and submit proof, whereupon the Commission will determine amounts to be paid.

Dated at San Francisco, California, this 16th day of March, 1923.

C C Seavey

H W Brundige

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J. Whittley

Commissioners.

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