Decision No. 12455

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Rosenberg Bros. & Company, Growers Rice Milling Company, C.E.Grosjean Rice Milling Company, Sacramento Valley Rice Milling Company, The National Rice Mills, California State Rice Milling Company, Complainants. vs. Atchison,Topeka & Santa Fe Railway Company, Southern Pacific Company, Western Pacific Railroad Company, Central California Traction Company, San Francisco-Sacramento Railroad Company, Sacramento Northern Railroad, Defendants.	CASE NO.1744.

E.W.Hollingsworth, R.T.Boyd, and Bishop & Bahler, for Complainants.
Elmer Westlake and H.W.Klein,for Atchison,Topeka & Santa Fe Railway Company and for Southern Pacific Company.
James S. Moore, for Western Pacific Railroad Company.
Charles R. Detrick and Heller,Ehrman,White & McAuliffe, for Sacramento Northern Railroad Company.
Butler & Van Dyke for Central California Traction Company.
L.H.Rodebaugh, for San Francisco-Sacramento Railroad Company.
Sanborn,Roehl & Smith, for Sacramento Navigation Company and California Transportation Company, Interveners.

BY THE COMMISSION:

SUPPLEMENTAL OPINION OF MODIFICATION OF PRIOR ORDER

In this proceeding, by Decision No.10895, August 23,1922, the Commission ordered the defendants to establish rates for the transportation of paddy rice, in carloads, not in excess of more than 125 per cent of the rates contemporaneously applied to whole

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grain - viz., wheat, oats, barley, etc., from and to the same points of origin and destination. At the same time, the defendants were instructed to pay reparation of the difference between the rates collected and the rates ordered into effect.

By Decision No. 11161, October 24, 1922, the proceeding was re-opened for presentation of proof so that the Commission might determine to whom the reparation, if any, should be awarded, and in what amounts.

By Decision No.11823, March 21,1923, the proceeding was ordered dismissed upon our conclusion that the complainants had failed to prove that the freight charges on the rice shipments here involved had been paid and had been borne by them and that they had been damaged as a consequence thereof.

On March 29,1923 complainants filed a petition for re-hearing and asked the privilege of oral argument before the Commission en banc upon a number of allegations. The petition for oral argument was granted, and arguments heard on June 20,1923. It will not be necessary to recite the allegations in detail, the contention being, however, that the evidence showed that the transportation charges on the shipments at issue had been paid by the complainants and that the Commission erred in failing to find that the complainants were entitled to the reparation found to be due.

Counsel for the complainants in argument laid great stress upon the language of the decision of the Supreme Court of the United States in the case of Southern Pacific Company vs. Darnell-Taenzer Lumber Company, 245 U.S. 531, in which the Court said, in part:

"The only question before us is that at which we hinted; whether the fact that the plaintiffs were able to pass on the damage that they sustained in the first instance by paying the unreasonable charge, and to collect that amount from the purchasers, prevents their recovering the overpayment from the carriers. The answer is not difficult. The general tendency of the law, in regard to damages at least, is not to go beyond the first step. As it does not attribute remote consequences to the defendant, so it holds him liable if proximately the plaintiff has suffered a loss. The plaintiffs suffered losses to the amount of the verdict when they paid. Their claim accrued at once in the theory of the law, and it does not inquire into later events.

"Perhaps strictly the securing of such an indemnity as the present might be regarded as not differing in principle from the recovery of insurance, as res inter alios, with which the defendants were not concerned. If it be said that the whole transaction is one from a business point of view, it is enough to reply that the unity in this case is not sufficient to entitle the purchaser to recover, any more than the ultimate consumer, who in turn paid an increased price. He has no privity with the carrier. The carrier ought not to be allowed to retain his illegal profit, and the only one who can take it from him is the one that alone was in relation with him, and from whom the carrier took the sum. New York, New Haven & Hartford RR Co. vs. Ballou & Wright, 242 Fed.862. Behind the technical mode of statement is the consideration, well emphasized by the Interstate Commerce Commission, of the endlessness and futility of the effort to follow every transaction to its ultimate result. Probably in the end the public pays the damages in most cases of compensated torts."

Similar proceedings referred to were:

Atchison, Topeka & Santa Fe Ry.Co. vs. Spiller, 246 Fed 1.
Bonfils vs. Pub. Utl. Com., Col. 189 Pac.775.
N. Y. & P. Co. vs. N.Y.C.Ry.Co. 110 Atl.286.
Ballou & Wright vs. N.Y.N.H.& H. 34 I.C.C. 120.

The Attorney for the defendants urged that because the complainants in this proceeding admitted in their testimony that the purchase price of the rice was in most instances based upon a basic price at milling points, less the freight charges, the consignees, in this case the millers, were not entitled to reparation for, while they paid the freight charges, the amount was actually provided and borne by the rice growers, by reason of the fact that these

charges were deducted from the amount paid for the rice.

This proceeding involves peculiar situations not usually present in reparation cases, for in this instance the Commission, in January, 1921, Cases 1432 and 1437, 19 C.R.C.248, ordered the carriers to publish paddy rice rates based on 125 per cent of the rates established August 26, 1920 applying to whole grain. This order was carried into effect and the rice rates remained at 125 per cent of the whole grain rates until January 7,1922, when grain rates were reduced 10 per cent without a corresponding reduction in the paddy rice rates. This adjustment made the paddy rice rates approximately 140 per cent of the grain rates and disturbed the adjustment ordered into effect by the Commission in January,1921. On July 1,1922 the paddy rice rates were reduced about 10 per cent, but since at the same time there were no further reductions in the rates applying to whole grain, the paddy rice rates then again became practically 125 per cent of the whole grain rates, which adjustment should have been made in January,1922, when the grain rates were reduced. Therefore, the paddy rice rates were excessive and unreasonable during the period of time January 7,1922 to July 1, 1922, inasmuch as they exceeded 125 per cent of the grain rates.

Upon further consideration of all the testimony and of the oral argument, we are of the opinion that the Darnell-Taenzer decision, supra, is controlling in a situation of this kind and that the complainants are entitled to and should receive reparation against the shipments involved in this proceeding.

We find that the complainants received the shipments of paddy rice and paid the charges thereon; that they had been damaged in the amount of the difference between the charges paid and those that would have accrued upon the basis of the rates found to be

just and reasonable. The complainants should submit statements to the defendant carriers of the shipments involved in this proceeding for check and consideration. Should it not be possible to reach an agreement as to the particular amount of reparation due, the matter may be brought before this Commission for further consideration and the entry of a supplemental order, should the same prove necessary.

Dated at San Francisco, California, this 6th day of August, 1923.

C L Seavey

H W Brundige

J T Whittlesey

Commissioners.