

Decision No. 13065

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Pacific Portland Cement Company, Cons.,)
a Corporation,)

Complainant,)

vs.)

Southern Pacific Company, a Corpor-)
ation,)

Defendant.)

ORIGINAL

CASE NO. 1730.

Sanborn & Roehl and DeLancey C. Smith, by H.E. Sanborn,
and Jas. A. Keller, for Complainant.

Elmer Westlake, H.W. Klein and V.S. Andrus, for Southern
Pacific Company.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Pacific Portland Cement Company, Consolidated, a corporation, filed March 1, 1922, a complaint with the Railroad Commission against the Southern Pacific Company, a corporation, alleging that the rate of 70 cents per ton from March 1, 1920 to and including August 25, 1920, and the rate of 90 cents per ton from August 26, 1920 to and including August 31, 1920, for the transportation of crude lime rock from Flint to Telenas, were excessive, unjust and unreasonable and in violation of Section 13 of the Public Utilities Act insofar as the rates exceeded 50 cents per ton. Reparation only is asked.

A preliminary hearing was held July 15, 1922 before Examiner Eddy, at which time no testimony as to the reasonableness of the rates was submitted, it being stipulated that this case, as to the reasonableness of the rates, could be decided upon the record made in Case No. 1447, which proceeding involved the same rate situation.

The shipments moved during the time commonly known as the Guaranty period, as set forth in an act of the Senate and House of Representatives - Transportation Act 1920. It was further stipulated at the hearing July 15, 1922 that the decision rendered by this Commission in Case No. 1864, California Packing Corporation vs. Southern Pacific Company, et al., involving the jurisdiction of this Commission during the Guaranty period, would be controlling on the jurisdictional question.

Under date November 21, 1923, by Decision No. 12843, this Commission announced it had jurisdiction over reparation awards involving intrastate transportation during the Guaranty period and ordered the defendants in Case No. 1864 and the associated cases to pay certain reparation amounts. The defendant filed a petition for a rehearing, which petition was denied by Decision No. 12976 on December 31, 1923.

The awarding of reparation in the instant proceeding is now before us on its merits as to the reasonableness of the rates without further consideration of the question of jurisdiction.

A second hearing in this case was conducted October 10, 1923 before Examiner Geary. At that hearing there was no testimony on the reasonableness of the rates, it being stipulated between the parties that the record in Case No. 1665, involving these rates between the same points would control.

The complainant is a corporation engaged in the quarrying and sale of rock and in the manufacture and sale of cement. Com-

plainant built its cement plant in 1902 at Cement, California, located on the line of the Cement, Tolenas & Tidewater Railroad, two miles from Tolenas. The lime rock deposit at the mill became exhausted and complainant developed lime rock quarries seven miles from Flint, on the American River, and built the Mountain Quarries Railroad from the junction point of the Southern Pacific at Flint to the quarries. All of the historical facts of the development of the quarries are referred to in this Commission's Decision No. 8962 in Case 1447, 19, C.R.C. 864. In Case 1447 this complainant called into question the rates on crude lime rock from Flint to Tolenas, attacking the reasonableness thereof, and by our Decision No. 8962, May 12, 1921, we dismissed the complaint, having found a 70 cent per ton rate on crude lime rock from Flint to Tolenas to be not unreasonable. The decision rendered May 12, 1921 was upon the record submitted August 26, 1920 and we then recommended that a rate of 70 cents per ton would be reasonable after September 1, 1920, the end of the Government Guaranty period. We also recommended that reparation be paid against any shipments at a rate higher than 70 cents per ton moving after September 1, 1920. The recommendations of this Commission made in Case No. 1447 were not complied with, and Case No. 1665 was instituted.

As heretofore stated, the record in Case No. 1665 was stipulated into the instant proceeding. This case required twelve days of hearings and resulted in 874 pages of transcript. The complainant filed 45 exhibits, the defendants 26 and the interveners 8. A showing was made of the volume of the tonnage of lime rock handled from Flint to Tolenas, revenue per gross ton mile, revenue per ton per mile, earnings per car mile, comparisons of freight rates on cement with other commodities, average car mile earnings, gross freight revenue per car, train operating costs, photographs, maps and diagrams of the curvatures and grades, statistics concerning

loaded and empty cars, the volume of traffic on the system, operating expenses and ratios, cost of maintenance of single and double tracks, locomotive costs, fuel, locomotive and car repairs, and mountain haul as compared with valley, etc.

Following submission of case No.1665, March 15,1922, and after initial briefs had been filed, the parties entered into informal conference, which resulted in the establishment, on March 8, 1923, of a rate of 50 cents per ton on crude lime rock moved from Flint to Tolenas, and also in acceptance of reparation to the basis of 60 cents per ton against shipments moved September 1, 1920 to July 1, 1922, this latter being the date when the rate was reduced from 70 cents to 60 cents.

This Commission, in its Informal Docket I.C.27165, authorized reparation to the basis of 60 cents per ton on all shipments moving from September 1,1920 to and including July 12, 1921, during which time the rate was 90 cents, and for the period July 13,1921 to June 30,1922, when the rate was 70 cents per ton. Case No.1665 was dismissed May 15,1923 by Decision No.12085.

The complainant relied to a great extent upon the fact that the rate of 50 cents per ton was enjoyed for many years and that improvements costing large sums of money were made at the quarry near Flint, dependent upon this rate.

The rate of 50 cents per ton was originally established October 9,1910; became 70 cents June 25,1918 by General Order No.28; 90 cents per ton August 26,1920 by Ex Parte No.74; was reduced July 13, 1921 to 70 cents; July 1,1922 to 60 cents, and is now 50 cents per ton, established March 8,1923.

We can find no basis in this record justifying as reasonable a rate of fifty (50¢) cents per ton during the Federal Guaranty

period, March 1, 1920 to August 31, 1920, inclusive, for the transportation of lime rock from Flint to Tolenas. The distance between these points is 72 miles, making a 50 cent rate. equivalent to 6.944 mills per ton per mile.

Upon careful consideration of all the testimony, exhibits and briefs filed in Cases Nos. 1447 and 1665, and reconsidering our Decision No. 8962, in Case No. 1447, and the further fact that the defendant voluntarily made reparation back to September 1, 1920 to the basis of 60 cents per ton, we are of the opinion and find that complainant should be paid reparation to the basis of 60 cents per ton on all of the shipments moved during the Federal Guaranty period from March 1, 1920, to and including the 31st day of August, 1920, against claims not extinguished by the statute of limitation, at time this proceeding was filed.

O R D E R

This case being at issue upon complaint and answers on file, having been duly submitted by the parties, full investigation of the matters and things involved having been had, the Commission being fully advised in the premises, and basing its order on the findings of fact contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that the above named defendant be and it is hereby authorized and directed to pay unto complainant, Pacific Portland Cement Company, Consolidated, amounts, with interest,

equal to the difference between the charges paid and those that would have accrued on the basis of a rate of sixty (60¢) cents per ton against the shipments of crude lime rock moved from Flint to Tolenas during the Federal Guaranty period, March 1, 1920 to August 31, 1920, both dates inclusive. This shall not apply to shipments for which payments were made more than two years prior to the filing of this complaint.

Dated at San Francisco, California, this 19th day of January, 1924.

W. A. Seavey

Davidson Martin
Egerton Shore

J. T. Whittney
Commissioners.

DISSENTING OPINION

by

COMMISSIONER BRUNDIGE.

There is no disagreement among the members of the Commission on the proposition that the complainant is entitled to reparation during the Federal Guarantee period. My dissent from the conclusions entertained by the majority runs only to the extent of such reparation.

In my opinion the complainant has completely proved that it is entitled to reparation upon all shipments of rock moved at a rate in excess of 50 cents a ton from March 1, 1920 to and including August 25, 1920. From August 26 to August 31, both inclusive, reparation should be made upon the basis of shipments moved at a rate in excess of 60 cents a ton.

Notwithstanding the fact that this Commission in Decision No. 8962, decided May 12, 1921, held that 70 cents a ton was not an unreasonable rate, it seems in view of the later testimony in Case No. 1665 and of the subsequent voluntary action on the part of the defendant in granting reparation on the basis of 60 cents a ton on all shipments after September 1, 1920, that the Commission was in error in its conclusion in Decision No. 8962, and that the reasonable rate for such shipments from September 1, 1920 to July 1, 1922 in fact must have been 60 cents per ton.

This conclusion seems to be sustained by the evidence in Case 1665, which was by stipulation made part of the record in this proceeding. I also feel that the Commission is justified in placing great weight upon the voluntary action of the


defendant in agreeing to pay reparation upon the basis of 60 cents a ton. This I deem to be an admission upon the part of the defendant that it was of the opinion that 60 cents was a fair and reasonable rate for the service at the time and under the circumstances existing when such service was rendered. Had the defendant not so believed there would have existed no justifiable grounds for granting reparation upon that basis.

If 60 cents is to be held to be the fair and reasonable rate for the period covered by the reparation agreement, a conclusion which to my mind seems inescapable in view of all the facts, then such rate properly may be taken as the basis for determining what should have been a fair and reasonable rate during the Federal Guarantee period, which is the sole question involved in the instant proceeding.

August 26, 1920, just before the end of the Federal Guarantee period, there became effective by Federal order an increase of 25 per cent in all freight rates. This increase was made for the purpose of enabling the railroads to pay the increase in wages previously awarded by the Federal Wage Board and other increased operating costs.

When the defendant voluntarily agreed to pay reparations on the basis of 60 cents a ton from September 1, 1920 to July 12, 1921, when the rate was 90 cents a ton, and from July 13, 1921 to June 30, 1922, when the rate was 70 cents a ton, there was included as a component part of the rates so reduced the 25 per cent increase granted for the purpose of paying the increased labor and other charges. If 60 cents a ton was a reasonable rate after the 25 per cent increase to cover increased costs, then it follows that prior to such increase the reasonable rate should have been a figure, which, when increased by 25 per cent, would equal 60 cents per ton. Such figure

is 48 cents. Had the complainant asked for reparation to the extent that the rate during the Federal Guarantee period exceeded this last figure I am of the opinion, in view of all the facts and circumstances, that it justly would have been entitled to recover to such extent.


Commissioner.