Decision No. 13116 ~~14076~~

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Pratt-Low Preserving Company,
Complainant,

vs.

Southern Pacific Company,
Defendant.

CASE NO. 1920.

A Larsson, for Complainant.
F.W.Mielke and H.W.Klein, for Defendant.

BY THE COMMISSION:

O P I N I O N

Complainant operates a plant for the preserving of fruit at Santa Clara. By complaint filed June 12,1923 it alleges that the rates charged by the defendant during the period between April 6,1921 and December 9,1921 on certain carload shipments of tin cans from San Jose to Santa Clara, fresh fruit between Santa Clara and San Jose, and empty carriers returning from Santa Clara to San Jose were unjust, unreasonable and in violation of Section 13 of the Public Utilities Act and in violation of lawful tariff rate, in that the rates charged exceeded a less than carload commodity rate of 3 cents per 100 pounds in effect between San Jose and Santa Clara.

Reparation only is sought.

83

Rates will be stated in cents per 100 pounds.

The rate applied on cans, San Jose to Santa Clara, prior to July 11, 1921 was 7¢, which was a commodity rate of 5¢ on freight, regardless of classification (except petroleum and petroleum products, and freight in tank cars) from Campbell to San Jose, plus 2¢, a carload commodity rate on freight regardless of classification (except cement) from San Jose to Santa Clara. The 2¢ rate from San Jose to Santa Clara was a proportional rate and applied only when incidental to a line haul.

Effective July 11, 1921, there was established a specific carload commodity rate on tin cans of 3½¢ from San Jose to Santa Clara.

The rate applied on fresh fruit was 3½¢, a carload commodity rate between San Jose and Santa Clara.

On empty carriers returning there was applied a rate of 9¢, the minimum Class B rate, subject to a minimum charge of $8.00.

There was at date of shipments a less than carload commodity rate of 3¢ from San Jose to Santa Clara and from Santa Clara to San Jose, which rate, when originally published in 1899, was established as a proportional rate to place Santa Clara on a favorable basis with San Jose on traffic originating at points beyond. It is this rate complainant alleges should be applied to the shipments in question.

There is no tariff provision for the application of this less than carload rate from and to industry tracks at either San Jose or Santa Clara. Complainant contends that Section 1 of Rule 15, Consolidated Freight Classification No.2, C.R.C.240, is authority for the application of less than carload rates on carload traffic. Section 1 of Rule 15 is entitled -- "Charge for

66

less carload shipments not to exceed charge on carload basis", and provides:

> "Except as provided in Sections 2 and 3 the charge for a less than carload shipment must not exceed the charge for a minimum carload of the same freight at the carload rate; the charge for a car fully loaded must not exceed the charge for the same lot of freight if taken as a less than carload shipment."

Cars were placed on industry tracks at point of origin, were given carload service while in transit and, finally, as carloads, were placed on industry tracks at destination. The literal interpretation of this rule simply means that if the carrier accepts a shipment offered as less than carload but which completely fills the car, the shipper will not be deprived of the benefit of the less than carload rate. The rule does not provide that when a car completely filled with freight is tendered no greater charge than the less than carload rates may be applied.

Less than carload rates in the tariffs of this defendant do not permit of delivery to industry tracks and the consignor having demanded and received carload service; that is, from industry track at the point of origin to industry track at the point of destination, cannot have the benefit of the less than carload rates which apply only from depot to depot. It is, therefore, impossible to read into the tariff the theory that under Rule 15 less than carload rates are to apply on carload traffic when consignments are tendered as carloads and transported as such.

Furthermore, the Pacific Freight Tariff Bureau Exception Sheet 1-G, C.R.C.225, by Rule 95, requires that all packages of less than carload freight must be marked. This was not done in connection with the shipments involved in this proceeding.

When shipments are tendered as carloads and receive carload service, the carload rates will be applied.

Passow & Sons vs. C.M.& St.P., 37.I.C.C.711
Selnicker Supply Co. vs. T.& O.,51.I.C.C.133
Columbian Iron Works vs.Southern Ry.,45.I.C.C.173
Pacific Construction Co. vs. S.P., 1.C.R.C.110.

Complainant presented exhibits purporting to show that the less than carload commodity rate was a just and reasonable rate to apply on carload traffic between San Jose and Santa Clara, and by the same means that the carload rates assessed were unreasonable to the extent they exceeded the less than carload rates. The handling as less than carload from depot in San Jose to depot in Santa Clara involves a haul of 2.6 miles, while the handling of carload traffic from industry at San Jose to industry at Santa Clara involves a haul of 3.25 miles and a different kind of service.

Complainant further contends that the carload shipments should enjoy the less carload rate, because the bill of lading covering these carload shipments did not have notation:

> "This is a carload at shipper's request and must not be delivered at less than minimum carload rate and weight."

This notation is from Rule 1 of Pacific Freight Tariff Bureau Exception Sheet 1-G, C.R.C.221, which is entitled: "Exclusive Use of Car for Less than Carload Traffic", and provides, in part:

> "Less than carload shipments of commodities rated both in carloads and less than carloads,loaded in cars which, at shipper's request are to run through without other loading, will be subject to minimum charge equivalent to carload rate on carload minimum weight. The following notation must be placed on bills of lading, waybills and transfer slips for same:
>
> 'This is a carload at shipper's request and must not be delivered at less than minimum carload rating and weight'."

It is complainant's contention that all shipments tendered as carload should have such a notation on the bill of lading, otherwise the less carload rates should be applied. Such a contention is unwarranted by any tariff rule, practice or decision, and we are unable to sanction such an interpretation. The rule clearly provides that when a shipper desires the exclusive use of a car for less carload traffic such service will be furnished when proper notation is made on the bill of lading and carload rates assessed.

Complainant further contends that Item 1840, Southern Pacific Tariff 730-A, C.R.C. 2436, reading;

Commodity	From	To	Rate in Cents per 100#, except as noted in individual items.
Freight (except Cement) regardless of classification,			
. . .	Carloads-- San Jose, Cal.	Santa Clara, Cal.	(*) 2¢

(*) Applies only when incidental to a line haul.

will apply on traffic upon which a line haul has at one time been performed, delivery taken and the shipment at a later date reshipped, a new bill of lading issued and the shipment treated as an entirely new transaction. Diversion and reconsignment are not in issue. The rate named is a proportional rate to be used in the construction of a through rate. In the absence of tariff provision after consignee has broken the seals of the car and has accepted and assumed full dominion and control over a shipment, it loses its identity as through traffic and the factors entering into the construction of such a through rate cannot be protected.

To place complainant's interpretation on this item would mean that the rate could be protected on any shipment regardless of date made, and could be applied on a shipment enjoying

69

a line haul many years previous to the final haul. Clearly, such an interpretation is impossible.

Both complainant and defendant offered in evidence exhibits supporting their views and contentions. All of these have been carefully noted, considered and given their due credit.

Under the circumstances and conditions we find that the Class B rate, subject to a minimum charge of $8.00 per car, on empty crates, returning, and the rate of 3½¢ per 100 pounds on fresh fruits and on tin cans, carloads, has not, on this record, been shown to be, per se, unreasonable, preferential, discriminatory or otherwise unlawful.

We find that the rates assessed on the carload shipments of tin cans moved between the period April 6, 1921 and July 11, 1921 were unreasonable to the extent they exceeded the rate of 3½¢, minimum charge $10.00 per car, established July 11, 1921, which rate we find just and reasonable; that complainant made the shipments as described, paid and bore the charges, and has been damaged to the amount of the difference between the charges paid and those which would have accrued upon the basis found reasonable, and is entitled to reparation with interest. The complainant should submit statement of shipments to the defendant for check. Should it not be possible to reach an agreement, the matter may be referred to this Commission for further consideration and the entry of a supplemental order, should such be necessary.

This reparation award shall not apply to shipments for which payments were made more than two (2) years prior to the filing of informal complaint No. 27288, April 7, 1923.

Having found that the rates charged on the carload shipments of fresh fruit and empty carriers returned, were not unreasonable, preferential, discriminatory, or otherwise unlawful,

70

the complaint is dismissed as to the part covering those commodities.

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 defendant be, and it is hereby authorized and directed to pay as reparation unto complainants, amounts, with interest, equal to the difference between the charges paid and those which would have accrued, at rate of 3½ ¢ per 100 pounds, minimum $10.00 per car, against carload shipments of tin cans moved from San Jose to Santa Clara during the period April 6,1921 to and including July 10,1921. This reparation order shall not apply to shipments for which payments were made more than two (2) years prior to the filing of Informal complaint, No. 27288, April 7, 1923.

IT IS HEREBY FURTHER ORDERED that as to all other issues the proceeding be dismissed.

Dated at San Francisco, California, this 4th day of February, 1924.

Commissioners.