

Decision No. 13297

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Pacific Portland Cement Company. Con-
solidated, a Corporation,

Complainant,

vs.

Southern Pacific Company, a Corporation,

Defendant.

In the Matter of Petition of Pacific
Portland Cement Company. Consolidated,
for an order instituting an investig-
ation on the Commission's own motion
and suspending rates.

CASE NO. 1644

Pacific Portland Cement Company, Con-
solidated,

Complainant,

vs.

Central California Traction Company.
Southern Pacific Company.

Sacramento Northern Railroad Company.

Defendants.

CASE NO. 1648

In the Matter of the Investigation of
Cement Rates of

The Atchison, Topeka & Santa Fe Railway
Company,

Bay Point & Clayton Railroad Company.

California Central Railroad Company.

Cement, Tolenas & Tidewater Railroad Com-
pany,

Sacramento Northern Railroad.

Southern Pacific Company.

Western Pacific Railroad Company.

CASE NO. 1774

BY THE COMMISSION:

SUPPLEMENTAL OPINION AND ORDER

The original opinion in this case is covered by our decision, No. 12216, June 19, 1923.

In that opinion we said:

"After a careful examination of all the facts of record we have reached the conclusion and so find, that a difference in the rates between the northern and southern mills at Sacramento of \$1.20 would more nearly reflect the difference in the transportation costs as between the two groups than the proposed differential of \$1. would preserve to the northern mills the advantage of their location and, at the same time, would give to the cement users in the Sacramento Valley the benefits of such competition as may exist in the cement trade where a difference in rate prevails as between two producing territories.

"We will not enter an order at this time fixing the differential at all points, but the defendant carriers will be expected within sixty (60) days, to submit for our approval a proposed adjustment of future rates from the four northern California mills into the Sacramento Valley and points north and east thereof which will establish at Sacramento a spread between the two groups, northern and southern, of producing mills of \$1.20 per ton, the same to be narrowed with the increase in distance so as to gradually blend and harmonize with the interstate adjustment in effect at Oregon and Nevada points."

Under date August 15, 1923, the Southern Pacific Company, in compliance with the Commission's opinion, presented a schedule of the proposed rates on cement, carloads, from Davenport and San Juan. Copies of this tentative adjustment were submitted to all the interested parties, who, failing to agree with the defendants' proposed rates, made protest against the establishment of the same.

The first case, No.1644, was filed July 30,1921, by the Pacific Portland Cement Company, who alleged that the certain rates published by the Southern Pacific Company, to become effective August 24,1921, for the transportation of cement from Davenport and San Juan to various points within the State of California, would create undue and unreasonable preferences in favor of complainants' competitors at Davenport and San Juan, and subject complainants to great prejudice, disadvantage and discrimination. The Commission was asked to suspend the rates and to investigate the reasonableness thereof.

Case No.1648 was filed August 16,1921 by the Pacific Portland Cement Company vs. Central California Traction Company, Southern Pacific Company and Sacramento Northern Railroad Company, and involved the same rates in connection with the tariffs of Pacific Freight Tariff Bureau.

Case No.1774 was filed June 7,1922, being an investigation on the Commission's own motion, and involving all of the carriers interested in the situation.

The cases were submitted on a very complete record July 15,1922, were briefed by the parties, the final brief received February 23,1923, and were orally argued before the Commission en banc March 19,1923.

In addition to these formal proceedings there were informal conferences represented by all parties, but these informal conferences were not productive of results and nothing of a concrete or agreed solution of the situation was suggested by any two of the litigants.

We have made a further careful study of this voluminous record and conclude that with all of the testimony, exhibits, briefs and oral arguments that an adjustment and positive order can now be

promulgated without a reopening of the proceeding.

The following extracts from Decision No. 12216 will be helpful in reaching a final conclusion:

"Since cement prices are generally based upon the mill price, plus freight from the nearest mill, the location of the Pacific Company gives it an advantage in the Sacramento Valley of which it is unwilling to be deprived through the fixation of a rate adjustment from its competitors' mills which does not properly reflect the difference in transportation conditions as between the two groups of mills. The Sacramento Valley territory is an important consuming section. The manager of the Santa Cruz Company testified (Tr.78) that in the order of their importance the primary markets for the distribution of cement in northern California are: San Francisco and the Bay territory; Sacramento Valley, north and east, and the San Joaquin Valley. The northern and southern cement mills are on a rate parity in the San Francisco territory, which is blanketed from San Jose to Richmond. The rates now in effect to the San Joaquin Valley territory, while not directly involved in that proceeding, were recommended by us in our decision in Case No. 232, decided on October 25, 1912. We there said (1.C.R.C.809-815):

'Recommendations of the Commission * * * * *:

4. Many informal complaints have been made to the Commission concerning excessive cement rates between the mills of northern and southern California and San Joaquin Valley points. We have made a careful study of this situation and suggest to the carriers that the following rates from various cement plants to points in the San Joaquin Valley be published'.

"The adjustment there suggested or recommended provides a basis of rates from Davenport 20 cents per ton higher than from Cement, Cowell and Napa Junction, the haul from Davenport being approximately 40 miles greater than the average distance from the three other mills. This basis was established by the carriers in conformity with our recommendations and is in effect today as modified by General Order No.28 of the Director General of Railroads, by our action of August 26, 1920, and the general reductions made effective in the summer of 1922, but because of the manner of changing the rates and the disposition of fractions the differentials in the San Joaquin Valley remain practically the same, being 20 cents per ton at most points. The rates from both the northern and southern mills to points on the Coast Line of the Southern Pacific, are, generally speaking, but with some exceptions, on a mileage basis, thus giving the southern mills a rate advantage in that territory, the same as is now enjoyed by the Pacific Company at points in the Sacramento Valley. The consumption of cement in this territory, however, is inconsequential as compared with the consumption in the

"three other territories referred to. It will be seen, therefore, that both groups of mills are on a rate parity in the San Francisco territory; that the northern mills have the advantage over the southern mills in the two next most important consuming territories and that the southern mills have the advantage only in the territory of lowest consumption, along the coast division of the Southern Pacific."

* * * * *

"Getting down to the fundamentals of the case, the question which all parties to the record wish us here to determine is how much more shall the southern mills pay than the northern mills to any given destination in the Sacramento Valley or points north and east thereof? Taking Sacramento as the key point, the present differential is \$1.50 and the proposed differential \$1. The southern mills stand solidly behind the Southern Pacific in its proposal to reduce the existing differentials, but the Pacific Company takes the position that the differential of \$1.50 at Sacramento is fair today. The more the southern mills are obliged to absorb in the Sacramento Valley, the greater the advantage in that territory of the northern mills, and that is their real interest in this proceeding."

* * * * *

"The position of the Southern Pacific is that its rates from the northern mills are not more than reasonable and that the proposed rates from the southern mills are less than reasonable, but are necessary to enable the southern mills to compete."

The whole proceeding resolves itself into the question of shall the defendant be permitted to establish rates which will fairly place the producing cement mills at Davenport and San Juan on a competitive basis in a consuming market with other producing points?

In a very early decision, dated April 17, 1896, involving coal rates, the courts in dealing with a question of competition,

I.C.C. vs. L&N R Co., 73 Fed. 409-19-20, said:

"The carrier's business is one which involves so many considerations, and the necessity of taking into account so many conditions, that questions of this kind do not admit of any rigidly theoretical rules in their solution. It must be kept in mind, too, that the carrier's business of transporting goods involves the rights of, and the necessity of doing justice to, three parties. The interest of the seller at the point of departure, the rights of the carrier, and the rights or interest of the trader or consumer at the point of delivery are all concerned in a given transaction, and must be duly considered by a tribunal or court in the decision of any case involving the carrier's freight tariff. * * * *
And in referring to 'trader' in this connection, either at the one point or the other, it is intended to use the word in a representative sense, as including all persons interested in the production and sale of a commodity at the point of departure of the goods, and all persons interested as dealers or consumers at the point of delivery. It was at one time thought doubtful whether the interests of the railway could be taken into account at all, but it is now established that they can be".

"There is also, besides the parties named, the interest of the public concerned in a traffic question like this. The public at large are greatly interested in competition, - with the more favorable prices which it brings, and, for that purpose, in keeping open the larger markets of the country to all points of production and supply. It is obvious, therefore, that in judicial action upon the question of rates the effect of the ruling must be closely observed, as it thus falls in different directions, and upon different interests, and no one particular interest can properly be considered to the exclusion of others.

"It thus appears beyond question, without reference to further authorities, that, in every case where a difference in the rates between two points of shipment is the ground of complaint, a leading and important element in the determination of the question is that of competition or want of competition. It is entirely apparent, too, that other practical conditions are to be taken into account, and that the mileage, while a circumstance to be considered with all the other facts and conditions, is by no means controlling or the most important. As early as 1872 it had been fully demonstrated in England that equal mileage as a basis for settling the difficulty was entirely impracticable."

The following quotations from Interstate Commerce Commission decisions are in harmony with the foregoing citations;
8,I.C.C.608-28,Dec.27,1900:

"We must not be understood as saying that cost of transportation alone controls. What we do say is that in this case distance alone cannot control. These rates cannot be made with a yardstick. Commercial conditions and physical conditions and the condition of the carriers themselves must be considered".

18,I.C.C.,403-407,May 9,1910:

"Differentials between competing coal mines to various markets of consumption cannot be established upon distance alone; nor can one case be safely made the precedent for another. Much depends upon competitive conditions, and each situation must be considered and disposed of by itself".

19,I.C.C.,71-75, June 10,1910:

"No jobbing point is entitled, because of unfair adjustment of rates, to exclusive possession of or complete supremacy in a particular consuming territory. A carrier may not, by the establishment and maintenance of unreasonable rates, give possession of a consuming territory to the jobbers at a point selected or favored by the carrier. Jobbers are shippers, and every shipper is entitled to reasonable rates. Every locality is entitled to reasonable and nondiscriminatory rates, and the dealers at any point are entitled to trade wherever and as far as reasonable rates will permit".

68,I.C.C.665-72,May 18,1922:

"Returning to the question of principle raised by respondents, we have no hesitation in conceding that carriers may properly make rates to meet competitive conditions, so long as such rates are reasonably compensatory and so long as they do not give rise to undue prejudice or preference".

77,I.C.C.228-30,Jan.26,1923:

"Proposed reduced rates on refined petroleum from points in the Houston-Beaumont-Port Arthur group of Texas to Chicago, St.Louis,Kansas City, and other points in western trunkline territory found justified.

"Proposed reduced proportional rates on refined petroleum and on crude and fuel oils from the same points of origin to New Orleans, Baton Rouge and North Baton Rouge,La., for beyond, found justified.

"The main objection of protestants to the proposed reduction from the Beaumont group is based on the distance from that group greater by approximately 200 miles than from the Sareveport-Eldorado group. But the history hereinbefore recited of the rate adjustment on petroleum and its products from the entire southwestern territory discloses that while the rates may have been established originally with some regard for distance, competition between the producing districts has now become so potent an influence that distance is being largely disregarded."

Competition is regarded as highly necessary in the development of a community, for it stimulates trade and tends to create commerce for a better distribution of commodities. The products of California are very diversified and, therefore, rates should be such in volume as will enable the producers, whether their product be cement, lumber, grain, fruits, vegetables or any similar commodity, to sell on a competitive basis with one another in the consuming markets. The opportunity to buy in a widely extended market is a valuable one, in that it presents a larger field for competition and ordinarily offers the best quality at the lowest prices.

Carriers have a right to establish rates which will not circumscribe, but which will encourage and foster the movement of manufactured articles and products of the soil. but carriers cannot establish rates so low that they will not give to producing points the advantages of their geographical location, nor publish rates which will place a distant producing point on an equality with a point geographically located near a consuming market, but the carriers may establish reasonable compensatory rates which will place a producing point on a competitive basis.

The controversy involving these cement rate adjustments from the different producing mills to the consuming territory - Sacramento, north and east thereof, was first brought to our attention, informally, June 8, 1915, file I.C. 6221. At that

time the Davenport mill demanded a 40 cent differential at Sacramento, the Southern Pacific Company suggested 75 cents, while the northern mills contended that the then differential of \$1.20 should be maintained. Because of the changes forced by the world war the informal discussions were not brought to a conclusion and nothing further was done until the attempted readjustment of the rates which resulted in these proceedings.

There have been many and important changes in the tariffs and rates since 1915, but it will not be profitable to here review the adjustments in detail.

On June 24, 1918 the rate on cement from Davenport to Sacramento was \$1.20 per ton higher than from the northern mills (Cement and Cowell); by General Order No. 28, effective June 25, 1918 all cement rates in the United States were increased 40 cents per ton, resulting in no increase in the difference of these cement rates. Effective August 26, 1920 all cement rates were increased 25 per cent. This changed the difference in the rates at Sacramento to \$1.50 per ton; on July 1, 1922 all rates were reduced by approximately 10 per cent, which reduction, by reason of the rule disposing of fractions, made the difference \$1.40 per ton, where it remains today, or 20 cents per ton higher than at the beginning of the world war.

In the San Joaquin Valley territory the rates from Davenport were 20 cents per ton higher than from Cement and Cowell. The rates underwent the same changes as outlined in connection with the Sacramento rates, but by reason of the disposition of fractions, the difference in the rate is again 20 cents per ton at most points.

The cement rates from all of the mills to San Francisco have always been on a parity and while the volume of the rate increased during the war period there is no difference in charges

from the four mills.

Much was said in the proceeding now before us about the cost of handling the lime rock from Flint to Tolenas used by the Pacific Portland Cement Company in its mill at Cement. At the beginning of the world war this rate was 50 cents per ton, it became 70 cents June 25, 1918, 90 cents August 26, 1920, 70 cents July 13, 1921, 60 cents July 1, 1922, and 50 cents March 8, 1923, this last change being to the pre-war basis.

In Increased Rates 1920, Application No. 5728, August 17, 1920, 18.C.R.C. 646-54, we said:

"Adjustments will be necessary and carriers will be expected to deal promptly and effectively therewith, to the end that such readjustments may be made in as many instances as practicable without forcing an appeal to this Commission."

The instant case presents such a situation. The testimony is that, except in unusual situations, there is no movement from Davenport to Sacramento and to the adjacent territory under the present rates.

This case is one not to be decided on technical theories, but as a practical proposition in which the interests of all the parties and the existing conditions must be considered.

The carriers now have rates to San Joaquin Valley points recommended by this Commission in 1912, and voluntarily established by the carriers with a difference of 20 cents per ton. We find no reason why the pre-war difference in rates should not be restored at this time for the Sacramento territory.

The result of all these readjustments has been to restore, except at Sacramento and the Valley points, the pre-war conditions so far as the differences in rates are concerned. San Francisco and the Bay territory are on a rate parity from all mills, the difference in

rates from all mills to San Joaquin Valley points is, with but few exceptions, on the original basis of 20 cents per ton, and the lime rock rate from Flint to Tolenas has been restored to 50 cents per ton.

As stated in the original opinion, the record here before us does not justify any conclusion as to the reasonableness per se of the cement rates and we are not now passing upon this question. The suspended rates proposed by the Southern Pacific Company are alleged to be less than normal and published to meet existing conditions. They may be rates which this Commission could not compel a carrier to publish but, being reasonably compensatory under all the conditions, should be permitted to go into effect with certain modifications.

At the time this proceeding was commenced the difference in rates at Sacramento was \$1.50 per ton, it has since been reduced to \$1.40 and carriers have proposed a difference of \$1.00.

Our conclusion upon the whole record is that the carriers should be permitted to publish reduced rates to Sacramento and the other points.

In a proceeding such as this investigation, it is obviously impracticable to prescribe rates to all points. The general purpose, however, has been served by the specific rates authorized, leaving the minor adjustments to be worked out by the defendants.

The rates to branch line points now under suspension and not specifically named herein, to be same differential between Tolenas and Davenport rates as exists at the main-line junctions.

All carriers defendant, according as they participate in the transportation, shall publish in proper tariffs, local or joint, the rates herein authorized.

The rates named in the following table, which rates we find to be reasonably compensatory and not unduly prejudicial, discriminatory or otherwise unlawful, making a difference of \$1.20 at Sacramento (the pre-war difference) and grading out at the more distant points, afford a consistent and equitable adjustment:

FROM
Davenport
AND
San Juan
TO

Sacramento	* 14	:	Whitney	17½
		:	Marysville	17½
		:	Berg	21
Charles	18½	:	Fagan	22
Freeport	18½	:	Chico	22
Cronin	19½	:	Gimbal	22
Walnut Grove	19½	:	Gerber	22½
		:	Blunt	25
		:	Anderson	26
Ramona	18	:	Middle Creek	27½
Manlove	19	:	Morley	28
Mills	20	:	Elmore	28½
Citrus	21½	:	Antler	30
Fair Oaks	21½	:	Delta to Cole.incl.	30
Nimbus	21½	:		
Alder Creek	21½	:	Tolenas	13½
Folsom Junction	21½	:	Vanden	13½
Folsom	21½	:	Elmira	13½
White Rock	22½	:	Vacaville	13½
Brandon	23½	:	Violet	17½
Bennett	24½	:	Hartley	17½
Cummings	26	:	Allendale	17½
Diamond Springs	26	:	Wolfskill	17½
Placerville	26	:	Rumsey	17½
		:		
Hopfen	17	:	Batavia	* 13½
Elvas	17	:	Davis	* 13½
Enwood	16	:	Merritt	* 14
Bowman	17½	:	Garic	17½
Cape Horn	22	:	Peart	17½
Gold Run	22½	:	Langenour	17½
Dutch Flat	23½	:	Yuba City	17½
Blue Canon	24½	:	Elvaton	17½
Yuba Pass	25	:	Ronda	17½
Farad	25	:	Cortena	19½
Mystic	25	:	Willows	19½
		:	Lyman	22
		:	Wyo	22
		:	Malton	22
		:	Richfield	22

FROM
Davenport
AND
San Juan
TO

Chiles	* 14	:	Army Point	13 $\frac{1}{2}$
Washington	* 14	:	Suisun-Fairfield	13 $\frac{1}{2}$
		:	Subeet	13 $\frac{1}{2}$
		:	Napa Junction	13 $\frac{1}{2}$
Waverly	13 $\frac{1}{2}$:	Flosden	13 $\frac{1}{2}$
Milton	13 $\frac{1}{2}$:	South Vallejo	13 $\frac{1}{2}$
Farmington	11 $\frac{1}{2}$:	Middleton	13 $\frac{1}{2}$
Cometa	12	:	Union	14 $\frac{1}{2}$
Adela	12 $\frac{1}{2}$:	West Napa	13 $\frac{1}{2}$
Oakdale	13 $\frac{1}{2}$:	Carneros	13 $\frac{1}{2}$
Waterford	14	:	Oak Knoll	14 $\frac{1}{2}$
Hickman	14 $\frac{1}{2}$:	Yountville	15 $\frac{1}{2}$
Montpelier	16	:	Rutherford	16
Ryer	16	:	St. Helena	17
Arundel	16	:	Krug	17
Amsterdam	16	:	Larkmead	17 $\frac{1}{2}$
Nairn	16	:	Calistoga	17 $\frac{1}{2}$
		:		

Squab	13 $\frac{1}{2}$
Merazo	13 $\frac{1}{2}$
Shellville Junction	14 $\frac{1}{2}$
Snyder	15 $\frac{1}{2}$
Eldridge	16
Wildwood	17
Oleson	17 $\frac{1}{2}$
Baku	18
Santa Rosa	18

* Applies only via Suisun-Fairfield.

O R D E R

These cases being at issue upon complaints and answers on file, having been duly submitted by the parties, the Commission having made and conducted an investigation upon its own motion, full investigation of the matters and things involved having been had, and the Commission being fully apprised in the premises and basing its order on the findings of fact which are contained in the opinion which precedes this order.

IT IS HEREBY ORDERED that the defendants, according as they participate in the transportation, be and they are hereby authorized and directed to establish on or before twenty (20) days from the date of this order upon notice to this Commission and to the general public by not less than five (5) days' filing and posting in the manner described in Section 14 of the Public Utilities Act, and thereafter to maintain and apply to the transportation of cement in straight carloads, rates as set forth in the opinion immediately preceding this order, and which are hereby made a part of this order.

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

Clifford

Irving Martin
Egerton Shore

John Whittier
Commissioners.

DISSENTING OPINION

I am unable to agree with the conclusions contained in the majority opinion. My objection does not run to the manner of the application of the differential of \$1.20 a ton in cement rates between the northern and southern groups of mills into the Sacramento territory, but rather to the necessity or desirability of disturbing the existing relationship between rates. In other words objection goes back to decision No. 12216, for which I bear my full share of responsibility, but which, in view of the facts as I now understand them, I believe to have been in error.

In the original case the Southern Pacific Company had proposed a new schedule reducing rates on cement from the more distant southern mills at San Juan and Davenport to Sacramento and points east and north thereof. No reduction was proposed in rates from the nearer northern mills at Cement and Cowell. The proposed reduction from the southern mills would result in establishing a difference between rates from southern and northern mills of \$1.00 a ton, whereas the differential at this time is \$1.40. The nearer northern mills protested, whereupon the Commission suspended the rate and set the complaints down for hearing. At the original hearing it was urged that the proposed differential of \$1.00 was necessary to enable the more southerly mills to do business in the Sacramento territory, but the Commission found that a differential of \$1.20, a figure half way between the present and the proposed differential, would prove sufficient.

In decision No. 12216 the Commission said:

"The Southern Pacific is here propounding a basis of rates from the southern mills which in the judgment of its traffic officials will enable the southern mills to compete in the Sacramento Valley, not on a rate parity

with the northern mills, but which will enable them in a measure to overcome their disadvantage of location and compete more actively with the northern mills than they are able to do under the differentials now in effect."

It was admitted by counsel for one of the southern mills that if the proposed rate was to be measured solely by mileage, or solely by cost, or solely by a combination of cost and mileage, the proposed rates from the southern mills were too low as compared with rates from the northern mills. Counsel for the Southern Pacific sought to justify the proposed reduction from southern mills and the failure to grant a similar reduction to the northern mills upon the ground of market competition.

The sort of market competition here referred to does not necessarily mean that the user of cement in the Sacramento territory will be able to supply his needs at a lower price, but that the southern mills will be enabled to lay down their commodity there at a lower cost than heretofore. At the same time the northern mills, upon which this territory in the past has and in the future must largely depend for the bulk of its supply, will not receive such rate reduction. Therefore there will be no incentive or reason for a price reduction by the northern mills and the price fixed by the near-by northern mills must have a strong if not wholly controlling influence upon cement prices in the Sacramento territory so long as other conditions remain as they now are. The practical result of the proposed reduction in rates from the southern mills only will be that on the comparatively small amount of cement which the southern mills will ship into the Sacramento territory they will be required to absorb from their profits a smaller freight bill than formerly with little, if any, corresponding benefit to the cement buying public.

While one of the many matters to be considered in rate-fixing is the ability of the producer to reach as wide a market as possible, this element alone is not controlling, nor indeed is it even persuasive if in attaining such end there results undue preference or disadvantage between shippers or localities, or if it places an undue burden upon other shippers. It seems to me that undue weight has been placed upon the desire of the southern mills to secure a wider market and that the proposed rates come perilously near if they are not wholly discriminatory both between persons and places.

I am of the opinion that when, as here, there has existed for a long period of years certain relationships between rate structures, and when these rates under changing economic conditions have been subject to both flat and percentage increases and percentage decreases leaving the relationship between them substantially the same, and when under these conditions the industry as a whole has prospered, the public has been served, and rival concerns have developed successful business enterprises, the presumption as to the fairness of those relationships is so strong that in the absence of convincing testimony to the contrary the Commission should be slow in authorizing a change. So far as I have been able to see there seems in this case an entire absence of any sufficient reason why rates should be lowered for distant mills which in any event may expect to sell but a limited amount of cement in the Sacramento territory, while rates from the near-by mills into the same territory remain as they now are.

In the past rates from both groups of mills have advanced simultaneously. The first advance during the period of government administration was a flat increase. Thereafter

there were percentage increases and percentage decreases. With every percentage increase or decrease the amount of the differential, expressed in cents, changed. Except under peculiar and unusual circumstances which do not appear to be present here the differential expressed in cents properly should change when percentage increases or decreases are made necessary by changing economic conditions.

The differential here referred to, being merely the difference between rates from two points into the same territory, is merely an incidental and more or less unimportant result of raising or lowering rate schedules. To make or adjust rates with the intent and for the sole purpose of producing or maintaining a certain fixed or unchanging difference in cents appears to me to be an illogical method of rate making. It is an attempt to make a result appear to be a cause. If, when economic conditions warrant a percentage increase or decrease in certain commodity rates, we must increase only some of these rates or decrease only some others in order to maintain a fixed differential expressed in cents, then it requires only a little figuring to determine that under marked and sudden economic fluctuations there may be obtained some weird and peculiar rates. Under such scheme necessary increases would not bear alike upon all shippers of the same commodity, nor would all share alike in the benefits of possible reductions. To pursue this phase of the subject further seems to be unnecessary.

What I particularly object to in the majority opinion is the assumption that since the difference in rates to Sacramento Valley points before the war was \$1.20 a ton there is to be found in that fact some warrant for now lowering the rate from only one group of mills so as to bring about exactly the same difference without reducing all cement rates to the figures that

prevailed before the war. If we could have pre-war rates then we properly should have pre-war differentials. Lacking the first we cannot have the other without coming dangerously near the line of permitting the charging of a preferential rate which is prohibited by law.

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

H. N. Brundage
Commissioner.