

Decision No. 13347

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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

Complainant,)

vs.)

Southern Pacific Company, a Corporation,)

Defendant.)

CASE NO. 1730.

BY THE COMMISSION:

ORDER DENYING PETITION FOR MODIFICATION OF OPINION

Complainant in the above proceeding, by pleading filed February 21, 1924, petitions this Commission to amend its opinion in Decision No. 13065 rendered in that case, by striking out the portion of the decision, reading:

"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."

Petitioner states that complainant did not rely to any extent, or at all, upon the fact that the rate of 50 cents per ton had been enjoyed for many years and that improvements had been made dependent upon that rate, and further states that in Case No. 1665 petitioner relied entirely upon the showing made by the fortyfive exhibits and the testimony given in connection therewith and at no

time did petitioner contend that the reasonableness of the rate from Flint to Tolenas, for the transportation of lime rock, could be determined by the investment made in the quarry at Flint. Our opinion in Decision No.13065 in no way states that the reasonableness of the rate was determined by the investment made by the petitioner in the quarry at Flint.

Petitioner further states that the testimony given in connection with quarry operations and the like was directed to the issue of milling in transit of lime rock at Cement, which issue was dismissed without prejudice.

Case No. 1665 embraced not only the milling in transit of lime rock, but also included the rates on crude lime rock, the rates on cement to San Francisco, Oakland, Berkeley and Richmond, and the payment of reparation. The testimony and exhibits were directed to all of these issues.

The entire record submitted in evidence in Pacific Portland Cement Company, Cons., vs. Southern Pacific Company, et al., Case No. 1447, was stipulated as an integral part of the proceedings in Case No. 1665, and the records in Cases 1447 and 1665 were in turn stipulated in as part of the record in Case No. 1730, so ipso Facto, the entire records in Cases 1447, 1665 and 1730 were before us in reaching our conclusions in Decision No.13065. The fact that Case No. 1665 was dismissed does not destroy or put out of existence testimony actually given and offered in that case.

In transcript of testimony of Case 1447, page 9, witness for the complainant testified, on July 30, 1920, in effect, that the maximum rate or differential they could stand from Flint to Tolenas, and exist, was 50 cents per ton and that this rate was required to enable them to compete with the other cement mills. On

page 10 of the same transcript a witness for the complainant testified:

"The freight rate of 50 cents per ton from Flint to Tolenas was finally approved by the executive traffic officials of the Southern Pacific, who were located at Chicago at that time, and when the rate was published we invested, upon an assumption that the raw material rate from Flint to Tolenas would not be disturbed, approximately \$900,000. which consisted of the construction of a railroad, right-of-way, rolling stock, bridges, etc., $7\frac{1}{2}$ miles long, 3 per cent grade, 16° curves, \$648,643.; milling and quarry machinery, etc., \$252,000."

On page 10 of the transcript in Case No. 1665, January 3, 1922, a witness for the complainant testified as follows:

"Q. What rate did the Southern Pacific Company originally establish for this traffic?

A. 50 cents a ton.

Q. How long did that rate remain in effect?

A. Remained in effect from the latter part of 1910 until June 24, 1918."

On page 66 of the same transcript, a witness for the complainant further testified as to the rate in effect prior to the establishment of the 50 cent per ton rate:

"Q. Well, you had either a class rate or a commodity rate, didn't you?

A. The Southern Pacific Company had the basis of making a rate on lime rock of 9 mills a ton a mile for 70 miles haul, which would make a rate of about 65 cents; but the rate was never published from Flint. And Mr. Jones quoted that rate to us -- he was then the traffic manager of the Southern Pacific Company -- quoted us the rate of 65 cents. But we could not do business on a 65 cent rate, and I was sent to Chicago to advise your people that 50 cents was the maximum rate we could stand and do business.

Q. And that was the rate that was published upon your solicitation?

A. Yes sir, in 1910.

"Commissioner Loveland: Was your plant constructed and built before that, before you got the rate?

A. No sir, we didn't -- After August, 1910, when the Southern Pacific Company executive traffic officials granted the 50 cent rate, we then built a railroad from Flint to quarry site, including a bridge over the American River that cost us some \$600,000. and we installed milling, quarrying machinery, bringing the investment up to between \$900,000. and \$1,000,000. Now, it required from the latter part of 1910 to February, 1912, to accomplish all this construction.

Mr. Sanborn: I don't think you understand the Commissioner's question. You mean was the cement plant constructed?

Commissioner Loveland: When did you make your first shipment of cement rock from --

A. February 1912, about 2 years after the rate was quoted, and during the interim we were doing all this building and constructing."

After a complete review of the proceedings, we find that the paragraph complained of by the petitioner is substantiated by the testimony given and that the paragraph in Decision No. 13065, Case 1730, squares with the record. No good reason has been set forth for the elimination of the language and, therefore,

IT IS HEREBY ORDERED that the petition for modification of the opinion in the above proceeding be denied, and the same is hereby denied.

Dated at San Francisco, California, this 29th day of March, 1924.

C. C. Sherry

Lawrence Martin
Spencer Shore

J. T. Whittebury
Commissioners.