

Decision No. 13657

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Madewell Manufacturing Company and
Western Pipe & Steel Company of
California.

Complainants.

vs.

Amador Central Railroad Company.
The Atchison, Topeka & Santa Fe Rail-
way Company.
Bay Point & Clayton Railroad Company.
California Central Railroad Company
California Western Railroad & Navig-
ation Company.
Chowchilla Pacific Railway Company.
Holton Interurban Railway Company.
Los Angeles & Salt Lake Railroad Company.
McCloud River Railroad Company.
Modesto & Empire Traction Company.
Nevada-California-Oregon Railway.
Nevada County Narrow Gauge Railroad Company.
Northwestern Pacific Railroad Company.
Pacific Coast Railway Company.
Pacific Electric Railway Company.
Pajaro Valley Consolidated Railroad Company.
Petaluma & Santa Rosa Railroad Company.
Sacramento Northern Railroad.
San Diego & Arizona Railway Company.
San Francisco-Sacramento Railroad Company.
Santa Maria Valley Railroad Company.
Sierra Railway Company of California.
Southern Pacific Company.
Sunset Railway Company.
Tidewater Southern Railway Company.
Visalia Electric Railroad Company.
The Western Pacific Railroad Company.
Yreka Railroad Company.
Central California Traction Company.

Defendants.

ORIGINAL

CASE NO. 1962.

E.W.Hollingsworth, R.T.Boyd and Bishop & Bahler,
for the Complainants;
Elmer Westlake, for all Defendants;
A.M.Reinhardt, for the Atchison,Topeka & Santa Fe
Railway, Modesto & Empire Traction Company,
and Sunset Railway Company;
J.L.Totten, General Freight Agent, for Los Angeles
& Salt Lake Railroad Company;
G.J.Bradley, for Merchants & Manufacturers Traffic
Association of Sacramento;
Seth Mann, for San Francisco Chamber of Commerce;
Frank M. Hill, for Fresno Traffic Association.

BY THE COMMISSION:

O P I N I O N

Complainants, Madewell Manufacturing Company and
Western Pipe & Steel Company, are corporations duly organized and
existing under the laws of the State of California.

By complaint, seasonably filed, they allege that the
rates assessed for the transportation of iron and steel surface
pipe are unjust and unreasonable because of a rule applicable to
the transportation of freight within California, which rule reads,
in part, as follows:

"No rates shall be applied on any traffic
moving under class rates lower than the
amount in cents per 100 lbs. for the re-
spective classes as shown below in the
current Western Classification. The min-
imum rate on any article shall be the rate
for the class at which the article is rated
in the current Western Classification.

In Cents per 100 Pounds

CLASSES	1	2	3	4	5	A	B	C	D	E
RATES -	25	21	17½	15	11	12½	9	7½	6½	5 "

Also that certain of the rates result in unauthorized
departures from the long and short haul clause of Section 21 of

Article XII of the Constitution of the State of California and Section 24(a) of the Public Utilities Act, and that the rates and rules published on June 25, 1918, under General Order No. 28 of the Director General of Railroads, created increases without authority of the Railroad Commission of the State of California and without any findings that the same were justified.

At the time the tariffs were supplemented, June 25, 1918, authority to make rates on federal-controlled railroads rested solely with the Director General of Railroads, and the Railroad Commission of the State of California was without jurisdiction over such rates.

By Decision No. 7983, 18.C.R.C. 646, Application No. 5728, August 17, 1920, this Commission authorized carriers within the State of California to establish the rates created during the federal-controlled period and also the increased rates made by order of the Interstate Commerce Commission in Ex parte 74, July 29, 1920, 58, I.C.C. 220. It would appear, therefore, that the increased rates have been lawfully authorized by this Commission.

The complainants did not seriously urge that there was any actual violation of the long and short haul provisions of the State Constitution and the Public Utilities Act. However, this Commission, in Decision No. 7983, supra, gave authority to carriers to continue violative rates and, under date September 13, 1920, 18.C.R.C. 762, Decision No. 8074, in Application No. 6049, et seq., specifically authorized the long and short haul violations, as set forth in the tariffs of the different carriers enumerated in the decision and order.

It follows that the rates complained of are not in violation of Section 63 of the Public Utilities Act, nor are they in violation of the long and short haul provision of the State

Constitution and the Public Utilities Act, they having been legally authorized by Decisions Nos. 7983 and 8074, supra. These two allegations will be dismissed.

The complainants ship iron and steel pipe 3 to 12 inches in diameter, 24 gauge and heavier, from Fruitvale and South San Francisco to points within a radius of approximately 150 miles and what they are actually contending for in this proceeding are the less carload ratings carried in Item No.1030 of Pacific Freight Tariff Bureau Exception Sheet No.1-I, C.R.C.300, effective May 19, 1923, without the application of that part of Rule 120 of the same tariff, or a similar rule in the individual tariffs of defendants, which reads:

"No rates shall be applied on any traffic moving under class rates lower than the amount in cents per 100 pounds for the respective classes as shown below in the current Western Classification. The minimum rate on any article shall be the rate for the class at which the article is rated in the current Western Classification. see Exceptions 1, 2 and 3."

Item No.1030 reads as follows:

"PIPE, iron or steel, spiral seam or straight seam riveted; also GALVANIZED IRON or STEEL PIPE (24 gauge and heavier, lock seamed and soldered). minimum carload weight 20,000 lbs.-

CLASS
L.C.L.

Over 12 inches in diameter - - 1 $\frac{1}{2}$
12 inches or less in diameter - 3

A witness for the complainant testified that as a result of his research he found the same classification of iron pipe was in effect as early as August 12, 1909.

A check of the tariffs on file with this Commission shows

that the Southern Pacific Company published, in its Local Freight Tariff No.3, C.R.C.No.2, effective September 10,1906, certain exceptions to the Classification, and in this Exception Sheet provided:

L.C.

PIPE, Sheet Iron, Spiral Seam or Straight seam, Riveted, owner's risk, breakage or released:

Over 12 inches in diameter	-	-	1 $\frac{1}{2}$
12 inches or less in diameter	-	-	3

The next tariff of the Southern Pacific Company as filed with this Commission is Exception Sheet No.2, C.R.C. No.129, issued January 14, 1909, effective January 23,1909, which tariff carried the same classifications for iron pipe.

Exception Sheet No.2, C.R.C.129, was cancelled by Exception Sheet No.2-A, C.R.C.486, issued July 2,1909, effective August 12,1909, and this latter tariff was cancelled by Pacific Freight Tariff Bureau Exception Sheet No.1, C.R.C.No.2, issued October 12,1909, effective November 26,1909.

Pacific Freight Tariff Bureau Exception Sheet No.1 has been reissued at different times until it is now Exception Sheet No. 1-I, C.R.C. 300.

Carriers did not commence to file tariffs until the year 1909 and, therefore, the records of this Commission do not reveal just when the present classification of iron pipe first came into existence, but this historical review shows that at least since September 10,1906 Iron Pipe of the size referred to in this complaint has been given the Exception Sheet 3rd class rating for a period of approximately 18 years. However, beginning with June 25,1918, the effective date of General Order No.28 of the Director General, and by the incorporation of appropriate rules in tariffs, charges were increased from the normal 3rd class ratings to a

minimum of 75 cents per 100 pounds (3 times first class of 25¢) by application of the Western Classification.

The following statement, from Exhibit No.2, on which complainants rely, shows the rates from Oakland December 31,1917 (when the railroads were taken under federal control) and these now in effect on the minimum class-rate basis:

<u>Rates in Cents per 100 Pounds</u>						
TO	Miles	Rate Dec.31,1917:	Rate	:Present:Percentage :	Rate	Rates were Exception Sheet Applic.
Hayward	: 14 :	6	: 75 :	1150	:	17 $\frac{1}{2}$
San Jose	: 41 :	6	: 75 :	1150	:	17 $\frac{1}{2}$
Salinas	: 109 :	27	: 75 :	178	:	38
King City	: 155 :	40	: 75 :	88	:	56 $\frac{1}{2}$
Fresno	: 189 :	38	: 75 :	97	:	53 $\frac{1}{2}$
Visalia	: 230 :	45	: 75 :	67	:	63 $\frac{1}{2}$

This exhibit shows, that within the territory where shipments move, the increases range from 67 to 1150 per cent.

Reference is made to the present commodity rate of 14 cents from Oakland to Tolenas, 47 miles, as compared with the minimum class rate of 75 cents from Oakland to San Jose for approximately the same distance. On June 24,1918 the Tolenas rate was 10 cents, the present rate is 14 cents, an increase of 40 per cent; the San Jose rate June 24,1918 was 6 cents, it is now 75 cents, an increase of 1150 per cent. This illustrates the results obtaining from the war-time changes, where in one case the new rates were arrived at by use of the percentage adjustments in connection with the commodity clause rule and the other made under the minimum class rate rule.

It is the position of complainants that the Exception Sheet Classifications create commodity rates and that they should not be increased by more than the regular commodity percentages, also that application of the minimum class rate rules eliminate the Exception Sheet.

We cannot subscribe to this contention, for while the Exception Sheet does create rates different from the Western Classification the rates remain class rates, subject to all conditions, rules and regulations of class rates and increase or decrease automatically with class rates. They are, therefore, at all times separate and distinct from specific commodity rates.

Complainant introduced testimony directed to the classification of iron surface pipe as carried in Western Classification No. 58 (Consolidated Freight Classification No. 3). The Classification provides for pipe, gauge 22 or thicker, and pipe, gauge 23 or thinner, when not nested and when nested, as set forth in tabulation below:

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Gauge No. 22 or thicker, but not thicker than No. 17.
 * Gauge No. 23 or thinner.
 @ Loose or in Packages.
 * in Bundles.

It will be observed that the different gauges of this pipe

take the same Western Classification classes for sizes over 8 inches; and for sizes over 3 inches but not over 8 inches, except that the 22 gauge may be shipped loose while the 23 must be in bundles, but as to the pipe 3 inches or less in diameter the 22 gauge pipe may be shipped loose or in packages at the 3rd class rate, while the 23 gauge, when shipped in bundles, takes double first and when loose three times first; in other words, the pipe, gauge 22 or heavier, 3 inches or less in diameter, when shipped loose to points taking the minimum scale, has a rate of $17\frac{1}{2}$ cents, while the gauge 23 or lighter, when shipped loose, takes three times first, or 75 cents per 100 pounds.

It is the complainant's contention that the pipe shipped under Item 1030 of the Exception Sheet, while thinner and lighter than 22 gauge, nevertheless takes no more space in the car, is not subject to any different handling than the heavier pipe, neither does it result in any damage claims and, therefore, should not be classified any different^{ly} than the heavier pipe.

The defendants had as a witness the chairman of the Western Classification Committee, who testified with reference to the manner in which the Uniform Classification Committee arrived at the classification for iron and steel pipe and the conclusion reached by the Committee appears to have been based upon a desire to move the pipe in bundles or packages wherever possible and this particularly applied to U.S. Standard Gauge No. 23 or thinner. There is no satisfactory explanation of why the 3 inch pipe of the thicker gauge should be permitted to move loose and the thinner pipe required to be shipped in bundles or taking a rating higher when forwarded loose.

Exhibits were introduced showing the manner of handling the pipe at the different loading stations and transferring at

junction points. The object of these exhibits, consisting of 11 photographs, was to illustrate the difficulty and the expense of handling pipe consignments. There was also an exhibit giving an analysis of the terminal handling cost of all less than carload freight and this exhibit purported to show an actual expense of 30 cents per 100 pounds and that any rate less than this amount results in actual loss to the carriers. Cost studies have been introduced at different times in a number of proceedings before this Commission and while they are illuminating and worthy of much consideration there has never been perfected any positive method of arriving at actual terminal handling costs. If we were to accept the figure of 30 cents per 100 pounds, here presented, as accurate and controlling, then it would be necessary to admit that all less carload freight handled at lower rates resulted in loss to the transportation companies. However, in view of the fact that the minimum class rate scale begins at a 1st class of 25 cents and, further, that there are large numbers of proportional and commodity rates in effect lower than 30 cents, it cannot be determined upon this record that all less carload freight moved at 30 cents per 100 pounds or less is unprofitable.

The carriers' presentation would indicate that in the opinion of their witnesses all of the iron pipe is now being transported at less than normal rates, if not at actual loss, but even if this were admitted to be proven there can be no justification in selecting pipe of a certain gauge to carry unreasonably high charges to equalize the loss.

General Order No. 28, as originally issued May 25, 1918, provided, in connection with the minimum class rate scale, as follows:

"Any article, on which Exceptions to any Classification provides a different rating than as shown in the Classification to which it is an exception, will be subject to the minimum as provided below for the class provided therefor in the Classification proper."

This was changed by Supplement, June 12, 1918, to read:

"The minimum rate on any article shall be the rate for the class at which that article is rated in the classification shown below applying in the territory where the shipment moves."

Had not General Order No. 28 been supplemented, this proceeding would not have been necessary, for the pipe would have taken the Exception Sheet classification, subject to the minimum scale.

The minimum class rate scale as carried in Pacific Freight Tariff Bureau Exception Sheet, under Rule No. 120, by Exceptions 1, 2 and 3 sets aside the application of that part of the rule objected to by this complainant in connection with boxes and crates, carload, secondhand, returned, and also as to the kind of packages for fresh fruit and vegetables. Similar exceptions are carried in local class rate tariffs of the individual defendants. This demonstrates that to meet certain situations defendants have voluntarily set aside the minimum scale with reference to the Western Classification ratings.

Throughout the proceeding it was apparent complainant was not making any attack upon the minimum class rates per se, but only upon the minimum scale rule as affecting the resulting charges by elimination of the Exception Sheet ratings. The rule makes practically a blanket rate to all points where this complainant ships iron pipe, for the minimum of 75 cents per 100 pounds applies from Oakland to San Leandro, a distance of 7 miles, the same as to Cottonwood, 209 miles on the north; to Floriston, 222 miles on the east, and to Pomona, 500 miles on the south.

The fact to be determined is not whether the rates were increased in compliance with all the intentions of General Order No.28 and other authorizations and decisions issued during the war period. but whether the rates in effect today are reasonable.

General Order No.28, because of the provisions of Section 1. governing class rates and classifications, especially that part of paragraph "D" already quoted, has been the cause of much complaint throughout the State of California because of the different interpretations placed on the tariffs by carriers' agents and by shippers, also to the fact that paragraph "D" in effect results in the elimination of Pacific Freight Tariff Bureau Exception Sheet classifications. The adjustment was devised to meet an emergency war situation, is illogical, and carriers should give consideration to necessary changes to overcome the complaints, not only as to the commodity here under consideration, but all others.

We find as a fact that the charges assessed by the defendants against iron and steel pipe 24 gauge and heavier, as rated in the current Western Classification, are excessive, unreasonable and discriminatory.

We further find that just and reasonable rates are those published by use of Item No.1030 of Pacific Freight Tariff Bureau Exception Sheet No.1-I, C.R.C. No.300, which Item should be made an exception to Rule 120 in this Exception Sheet and to the similar rule or rules published in the individual tariffs of defendant carriers.

O R D E R

This case being at issue upon complaint and answer on file, having been duly heard and submitted by the parties, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion, which opinion is hereby referred to and made a part hereof..

IT IS HEREBY ORDERED that the above named defendants, according as they participated in the transportation, be and they are hereby notified and required to establish/on or before twenty (20) days from the date of this order, upon notice to this Commission and the general public by not less than five (5) days' filing and posting in the manner prescribed in Section 14 of the Public Utilities Act, and thereafter to maintain and apply to the transportation of Pipe, iron or steel, spiral seam or straight seam riveted, also Galvanized Iron or Steel Pipe (24 gauge and heavier, lock-seamed and soldered), less carload, loose or in packages;

Over 12 inches in diameter ----- $1\frac{1}{2}$ times 1st Class
12 inches or less in diameter ----- 3rd Class

Which classification and the resulting rates, subject to the minimum class rate scale, but not to the Western Classification, are found to be just and reasonable

Dated at San Francisco, California, this 5th day
of June 1924.

C. S. ...

Dwight Martin

J. E. Whitely
Commissioners.