

Decision No. 14789

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Rivers Brothers Company, Incorporated,)
Complainant.)

vs.)

Southern Pacific Company,)
Defendant.)

CASE NO. 2064

Charles Clifford, for Complainant.

F.W.Mielke and L.C.Zimmerman, for Defendant.

SQUIRES, COMMISSIONER:

O P I N I O N

Complainant in this proceeding is engaged in the sale and distribution of fruits and vegetables, and maintains its principal place of business at Los Angeles, California.

It is alleged by complaint filed November 3, 1924 that rates assessed for the transportation of apples, moving from November 10, 1922 to April 30, 1924, both dates inclusive, from Soledad to Los Angeles, when stored in transit at Atascadero, and from Soledad to Atascadero, have been in the past and will be in the future, unjust, unreasonable, unlawful, prejudicial and unduly discriminatory and in violation of the Public Utilities Act, to the extent that they

exceeded or may exceed 41 $\frac{1}{2}$ cents per one hundred pounds from Soledad to Los Angeles, when stored in transit at Atascadero, and 10 cents per one hundred pounds from Soledad to Atascadero.

Reparation is sought. Rates will be stated in cents per one hundred pounds.

A public hearing was held March 25, 1925, at which evidence was offered by both parties and the case, having been submitted, is now ready for an opinion and order.

Soledad and Atascadero are located on the Coast Division of the Southern Pacific Lines. Soledad is 328 miles north of Los Angeles and 83 miles north of Atascadero. Atascadero is 245 miles north of Los Angeles.

The shipments involved cover apples grown during the seasons of 1922 and 1923. For the season of 1922 four cars, having a total weight of 201,275 pounds, were forwarded between November 10 and November 25, from Soledad to Atascadero, for storage. The outgoing movement, according to a statement attached to the complaint, between December 22, 1922 and February 7, 1923, showed 7 carloads, having a total weight of 293,794 pounds, or 92,519 pounds in excess of the inbound movement. Apples are raised locally at Atascadero and it is, therefore, apparent that the excess outbound tonnage includes apples produced and stored locally, which excess cannot be considered as part of the transit movement from Soledad to Los Angeles. For the 1923 season, between September 27 and November 3, inclusive, 31 cars, weighing 1,602,957 pounds, were shipped from Soledad to Atascadero for storage. The outbound movement to Los Angeles between January 3 and April 30, 1924 consisted of 37 cars, having a total weight of 1,477,930 pounds, a shrinkage over the

inbound tonnage of 125,007 pounds. Complainant, at the hearing, explained that this was probably due to deterioration and local disposals.

On shipments moving prior to August 16, 1923 defendant applied its established rates of 22½ cents from Soledad to Atascadero, and 35½ cents from Atascadero to Los Angeles, a through rate of 58 cents. The first named factor was the regular Class C rate and the latter a commodity rate, applicable from Watsonville to Los Angeles, held as maximum from Soledad.

Effective August 16, 1923 defendant established and thereafter applied to complainant's shipments a rate of 20 cents from Soledad to Atascadero and a rate of 31½ cents from Atascadero to Los Angeles, making a through rate of 51½ cents. These rates apply to apples held in cold storage at Atascadero, but only when reshipped within twelve months after date of arrival at that point. These proportional rates, defendant's witnesses testified, were published to place the Atascadero cold storage plant on an equality with its San Francisco competitors.

The 41½ cent rate from Soledad to Los Angeles, desired by complainant, applicable to shipments of apples stored in transit at Atascadero, is based on defendant's established rate of 35½ cents in effect for a direct through movement from Soledad to Los Angeles, plus a storage in transit charge of 6 cents.

Complainant contends that a 6 cent storage in transit privilege established in certain Western States, carried in Western Trunk Line Circular No. 18-E, creates unlawful discrimination by reason of the same privilege not being published in this State. No storage in transit privilege on apples, the record shows, is permitted

by carriers in California. But this contention has already been adjudicated, based mainly on differences in conditions, as unsound in law. Transit is a privilege which a carrier may grant or withhold at will and the Commission has no authority to order it extended; but in cases where discrimination is proved by reason of the existence of transit privileges, it may order the discrimination removed. (Koch, et al. vs. Penn. RR Co., et al., 10 I.C.C. 675). Moreover, if there were unlawful discrimination in the situation described by complainant it would not be intrastate, and the Interstate Commerce Commission has distinctly held that the existence of transit privileges in one State and their denial in another does not constitute interstate discrimination. (Globe Grain & Milling Co. vs. A.T. & S.F. Ry., et al., 36 I.C.C. 662). Under the circumstances disclosed by the record in this proceeding, therefore, it cannot be held that the refusal of the defendant to provide within California storage in transit on apples results in unlawful discrimination against, or undue prejudice to, complainant, or that it is otherwise contrary to law.

Complainant stored no apples at Atascadero during the season of 1924, and a statement furnished by defendant shows that none were forwarded to that point during that season from either Soledad or Watsonville. The cold storage plant at Atascadero is closed at the present time.

The rate of 35½ cents, Soledad to Los Angeles, a distance of 328 miles, is part of an extensive blanket adjustment, the same rate applying from Marysville to Los Angeles, 493 miles, and from Casmalia to Los Angeles, 184 miles. Defendant's witnesses testified that this 35½ cent rate was intended to place apple producers upon a rate equality in the Los Angeles market, and there

appears to be no other reason for it. Complainant did not seriously attack this through rate, neither did it make any attempt to prove that the reshipping rate of $31\frac{1}{2}$ cents, Atascadero to Los Angeles, is either excessive or unreasonable.

There now remains for consideration the allegation that the rate of 20 cents, Soledad to Atascadero, applicable only to apples placed in storage at the latter point for reshipment, is unreasonable. The classification rate in California for apples in carloads, between local points, is Class C, or $22\frac{1}{2}$ cents between these two stations. The 20 cent rate, effective August 16, 1923, is a commodity rate published especially for the benefit of the Atascadero storage plant. As evidence that the 20 cent rate is unreasonable, complainant presented exhibits giving rates on apples contemporaneously in effect from Stockton to San Francisco, also between various other points in the same general territory; but the rates quoted cover points where there is either water competition, or where the rates were established many years ago to meet cannery requirements. It cannot be said that these low rates, published to meet formerly existing conditions now existing in their particular territory, should be a measure for the rates from Soledad to Atascadero, where there are not like circumstances and conditions.

Upon the record established in this case, I am unable to find that the rates assailed were, or will be for the future, unjust, unreasonable, unlawful, prejudicial, unduly discriminatory, or in violation of the Public Utilities Act.

I recommend that an order be entered dismissing the complaint.

O R D E R

This case being at issue upon complaint and answer on file and having been duly heard and submitted by the interested 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 complaint in this proceeding be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of April, 1925.

H. B. Brundage
C. Leary

George D. Squires
Ernest Scott
Commissioners.