Decision No. 15228

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Union Rock Company, a corporation,
Complainant,

vs.

The Atchison, Topeka & Santa Fe Railway Company, a corporation,
Defendant.

CASE NO. 2094

American Crushed Rock Company, a corporation,
Complainant,

vs.

The Atchison, Topeka & Santa Fe Railway Company, a corporation,
Defendant.

CASE NO. 2095

Hugh Gordon and B.H.Carmichael for Union Rock Company and American Crushed Rock Company, complainants.

E.W.Camp, B.Levy and Charles K.Adams, for The Atchison, Topeka & Santa Fe Railway Company, defendant.

Samborn, Roehl and DeLancey C. Smith, by E.H.Samborn and James A.Keller, for Reliance Rock Company, Intervener.

SQUIRES, Commissioner:

O P I N I O N

These cases were, by agreement of counsel, heard on one record and will be disposed of in one report.

Complainants, Union Rock Company (Case No.2094) and

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American Crushed Rock Company (Case No.2095) are corporations engaged in the manufacture and sale of crushed rock, sand and gravel, with their principal offices at Los Angeles.

The complaints in both cases were filed January 30,1925 and allege that the rate of $5.85 per car maintained by defendant for the transportation of crushed rock, sand and gravel from Kincaid to Azusa, published in Santa Fe Local Tariff C.R.C. No. C.L.608, is unreasonable, unjust, discriminatory, preferential and in violation of Sections 17 and 19 of the Public Utilities Act to the extent that it is lower, when used in conjunction with rates on crushed rock, sand and gravel to points beyond Azusa via the Pacific Electric line, than the regular two-line haul basis alleged to be maintained by rail lines in Southern California for the transportation of these commodities.

The Commission is asked to prescribe a just, reasonable and nondiscriminatory rate for the future.

The Reliance Rock Company, a corporation, with its principal place of business at Los Angeles, operating a rock crushing plant at Kincaid and shipping rock under the rate under attack, intervened in its own behalf, protesting the granting of the petition upon the plea that it had a direct and vital interest in the outcome of the proceeding.

A public hearing was held in Los Angeles April 24,1925 and the cases having been submitted and briefs having been filed and considered, are now ready for an opinion and order.

Kincaid is located on defendant's line two miles from Azusa, the latter station being the interchange point between its rails and the rails of the Pacific Electric Railway.

The complainant, Union Rock Company, maintains crushed

rock, sand and gravel plants at Kincaid on defendant's line, at Puente Largo on the Pacific Electric Line, and at Rivas, Baldwin Park and Crushton, points served by both the Southern Pacific and Pacific Electric lines. The plants at Puente Largo and Kincaid are connected by a track approximately five-eighths of a mile long, owned and maintained by the complainant, and equipment is moved over this track by and at the expense of the Union Rock Company. The plant of the American Crushed Rock Company is located at Claremont on the Pacific Electric line and that plant is also connected with defendant's line by a spur track constructed, maintained and operated by complainant. The American Crushed Rock Company is controlled by the Union Rock Company through stock ownership.

The complaint alleges that the track connection at Azusa between the rails of the defendant and the Pacific Electric Railway was installed sometime during the year 1916 to meet an emergency presented by the Pacific Rock and Gravel Company, complainant's predecessor, whose crushing plants at Butler on the rails of the defendant had been washed out by floods. The last named company desired at that time to make deliveries of crushed rock from its Puente Largo plant on the Pacific Electric line. The connection was used in the manner described for about two years, or until the Union Rock Company established its present plant at Kincaid.

Complainants further contend that after the construction of its rock crushing plants at Kincaid on the rails of the defendant, the connecting track at Azusa was only employed during periods of car shortage for the purpose of enabling equipment of the defendant to move over the connecting tracks to Puente Largo on the

rails of the Pacific Electric Company. It is claimed that complainants have made no use of the interchange tracks at Azusa since 1920.

The per car charge on crushed rock, sand and gravel from Kincaid to Azusa was first established in the early part of 1917, and at that time was $5.00. By the general increase, effective August 26,1920, and the general ten per cent reduction, effective July 1, 1922, this rate was successively increased to $6.50 and then reduced to $5.85. The latter rate remained in effect until November 25,1924, when it was temporarily cancelled. This cancellation of an alleged unused and dead rate was authorized with the usual stipulation prescribed by the Commission, that should any movement develop within twelve months after cancellation, the rate would be restored by defendant without protest. During the latter part of December,1924 intervener advised the Commission that it contemplated shipping crushed rock from its plant at Kincaid on or about February 1, 1925 and requested restoration of the cancelled rate. The rate was therefore republished and made effective February 1,1925.

Complainants point out that for a two-line haul carriers in Southern California generally apply a differential of thirty cents per ton over the one-line rates, although in some cases the differential is twenty cents, and they contend that by reason of these differentials and the keen commercial competition in Southern California in the commodities in which they deal, it is imperative that their plants be so situated that they can, in most instances, market their products by the use of a one-line haul. The testimony shows that to enjoy this privilege and advantage they have, at considerable expense, erected plants at various localities, making it possible by direct connection or by the construction of spur

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tracks to fill practically all orders for rock, sand and gravel from plants thus located so as to require only the services of one carrier; in other words, they have sought to eliminate the two-line haul charges.

The cause of action of the complaints in these cases thus appears to be based on the premise that the per car charge of $5.85 from Kincaid to Azusa, used in connection with the one-line rates on shipments destined to points beyond, affords complainants' competitors a lower through rate than would be in effect were defendant and its connections required to apply the regular one-line scale basis, plus a differential of twenty or thirty cents per ton for the two-line haul, and that the maintenance of this $5.85 per car rate unduly discriminates against complainants and unduly prefers their competitors located at Kincaid.

Complainants presented a number of exhibits comparing the crushed rock rates in effect for a one-line haul between selected points in Southern California and the rates between points in the same territory for corresponding distances involving a two-line haul. The rates, for the most part, show differentials of twenty or thirty cents, there being no uniform basis.

Intervener urges that the two-line rates set forth in the exhibits presented by complainants are paper rates, for if complainants so elected they could ship between the points covered by the exhibits via one line, or if shipments were destined for delivery at the large terminals on a line other than the one performing the line haul, then at the one-line rates plus a switching charge of $2.70 per car. Attention is further directed to the per car rates in effect in Southern California between Los Angeles and the points named, applicable on freight

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regardless of classification, when originating at or destined to points beyond Los Angeles, which complainants admit are used by them in the marketing of their quarry products:

Between	And	Distance in Miles	Rate Per Car
Los Angeles	Industrial	4.0	$4.50
" "	Florence	7.0	4.50
" "	Slauson	7.0	4.50
" "	Wildasin	8.0	4.50
" "	Forest Lawn	6.0	4.50
" "	Clifford Spur	6.0	4.50
" "	Glassell	6.0	4.50

NOTE: The above rates are to be found in Southern Pacific Company Tariff 730-C, CRC.2904; Atchison, Topeka & Santa Fe Tariff 8117-J, CRC.542; Los Angeles & Salt Lake Railroad Tariff 133-D.

The $5.85 per car charge published by the defendant Kincaid to Azusa, applies, as heretofore stated, only as a proportional rate on shipments delivered to the Pacific Electric line destined to points beyond that line. This rate, however, is not the only per car rate from quarries in this grouped producing territory. Pacific Electric Tariff No.120-B carries a rate of $2.70 per car from Puente Largo to Rivas applicable only when destination is to Southern Pacific points, and a rate of $7.20 per car Puento Largo and Rivas to Azusa when shipments are destined to points on defendant's lines. It is thus apparent that if complainant's petitions were granted, and the $5.85 rate ordered cancelled, they would have a decidedly preferential adjustment from Puente Largo and Rivas as compared with the intervener, Reliance Rock Company, shipping from Kincaid. Complainants would have the one-line rate plus the per car charge to junction points, while the intervener, shipping from the same territory, would have only the two-line rates with the differential of thirty cents per ton.

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To constitute unjust discrimination or undue preference a carrier must charge one shipper a greater or less amount than another for the transportation of a like kind of traffic under similar circumstances and conditions. To be unjust, discrimination must be unlawful - that is to say, forbidden by law - and those acts of the carrier which constitute unjust discrimination are questions of fact to be ascertained from the evidence. (Am. Coal and Coke Co. vs. M.C.R.R. 36, I.C.C.195. R.R.Com.of La. v. Aranson Harbor Terminal Ry. Co.,et al., 48 I.C.C.312).

Complainants admit that the movement of the bulk of their shipments involves only a one-line haul. The evidence shows that where they are compelled to use a two-line haul they may do so under rates based on the one-line scale, plus a per car switching rate, or a per car line haul rate, lower than the $5.85 per car rate from Kincaid to Azusa. The $5.85 rate, Kincaid to Azusa, may be used by complainants the same as by their competitors. Hence having in view the definition of discrimination to which reference has been made, I am unable to perceive in what respect, under the facts disclosed by this record, complainants are subjected to unjust discrimination.

The complaints also allege that the rate of $5.85 is unreasonable, but no serious attempt was made to sustain that allegation. Indeed, counsel for complainants stated that the complaints are primarily directed against the discriminatory feature of the rate.

Upon consideration of all the facts of record I am of the opinion and so find that complainants have failed to show that the rate assailed is unreasonable, unjustly discriminatory or unduly preferential. The complaints should be dismissed.

The following form of order is recommended:

O R D E R

These cases being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, full investigation of the matters and things involved having been had and the Commission having, on the date hereof, made and filed its opinion containing its findings of fact and conclusions thereon, which said opinion is hereby referred to and made a part hereof:

IT IS HEREBY ORDERED that the complaints in this proceeding be and they are 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 30th day of July, 1925.

H. H. Boundige

George D. Squires

Leon O. Whitsell

Commissioners.