

Decision No. 15344

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

E. J. Dailey and Fenton-Parker  
Material Company,

Complainants,

vs.

San Diego and Arizona Railway  
Company,

Defendant.

CASE NO. 1991

Byron J. Walters, and Byers-Chessman-Gardner, Inc., by  
Edgar B. Byers, for the Complainants.

J. E. Lyons, R. G. Dilworth and F. B. Dorsey, for Defendant.

BY THE COMMISSION:

O P I N I O N

Complainant, E. J. Dailey, an individual, is a building and roofing contractor with his principal place of business at San Diego, and complainant, Fenton, Parker Material Company, is a corporation engaged in the production and sale of building materials, paving materials and supplies, with its principal place of business at San Diego.

By complaint filed March 31, 1924, amended May 7, 1924 and June 23, 1924, it is alleged that the rates assessed by defendant during the period of time May 9, 1922 to June 23, 1924 for the

transportation of crushed rock, sand and gravel from Otay Gravel Pit, Spring Valley Quarry and Riverview to San Diego were unjust, excessive, unreasonable and discriminatory to the extent they exceeded  $2\frac{1}{2}$  cents per 100 pounds or 50 cents per ton. It is further alleged that for the future a rate in excess of 2 cents per 100 pounds or 40 cents per ton will be unjust, excessive, unreasonable and discriminatory.

Reparation is sought. Rates will be stated in cents per ton of 2000 pounds, the basis employed by the witnesses in their testimony.

The shipments involved moved from producing plants located at Otay Gravel Pit, Spring Valley Quarry and Riverview. The Otay Gravel Pit plant produces sand and washed gravel, the Spring Valley plant crushed rock and rip rap and the Riverview plant sand. The combined capacity of the plants, according to testimony, is approximately 1600 to 1900 tons per day of nine hours, of which the plant at Otay Gravel Pit produces about fifty per cent. Otay Gravel Pit is 9.7 miles south of San Diego, situated on a branch extending a distance of one mile from Otay, the main line junction point. Spring Valley Quarry and Riverview are on defendant's Lakeside branch, distant 9.8 miles and 20.2 miles respectively from San Diego. These three shipping points until recently had been grouped for a number of years for rate making purposes, regardless of the fact that the haul involved from Riverview is more than double that from either Otay Pit or Spring Valley.

This Commission, by Decision No. 2971, December 11, 1915, in Application No. 1752, (8,CRC.714), authorized San Diego

& Southeastern Railway Company, the predecessor of this defendant, to increase the crushed rock, sand and gravel rate from 40 cents to 47 cents per ton, a conclusion reached upon a very complete record, which at that time showed that the railroad was conducting its service at an actual operating loss, amounting to \$59256.20 in 1915, with a total deficit after payment of interest of \$86287.21. By General Order No.23 of the Director General of Railroads, the 47 cent rate was increased to 70 cents, effective June 25, 1918. Defendant reduced this rate to 60 cents August 20, 1918 to apply from Otay Gravel Pit and Spring Valley Quarry and, effective September 20, 1918, from Riverview. These rates remained in effect until August 26, 1920, when, following the decision of the Interstate Commerce Commission in Ex Parte 74 and our Decision No.7983 (18, CRC. 646) the 60 cent rate was increased to 80 cents. The 80 cent rate has been reduced a number of times since August 26, 1920. From May 8, 1922 to September 15, 1922, inclusive, defendant maintained from Otay Gravel Pit, Spring Valley Quarry and Riverview to San Diego on the three commodities - crushed rock, sand and gravel - rate of 65 cents, minimum carload weight 40000 pounds. Effective September 16, 1922 there was established on sand only from these three points to San Diego, an additional rate of 55 cents, with the minimum carload weight increased to 60000 pounds. On September 6, 1923 defendant established from Otay Gravel Pit to San Diego a rate of 55 cents on crushed rock and gravel, with a minimum carload weight of 60000 pounds.

The rates, today, on sand are identical from all three shipping points - 55 cents, with a minimum of 60000 pounds. On crushed rock and gravel from the Otay Pit the rate is 55 cents,

with a minimum of 60000 pounds, and from Spring Valley and River-view 65 cents, with a minimum of 40000 pounds.

The testimony shows that at the request of complainants the rates were reduced from time to time in an effort on the part of defendant to retain the tonnage to the rails against truck competition, and also that the 65 cent rate, with a minimum of 40000 pounds, was continued in effect from Spring Valley and Riverview because shippers agreed that the crushed rock from those points, having a higher value than that from Otay, could stand the rate.

Complainants compared the rates assailed with the rates on crushed rock, sand and gravel contemporaneously in effect in Northern and Southern California for distances ranging from 7 to 63 miles. The rates in Southern California for 25 miles and under are for the most part based on a so-called unpublished rock scale of 60 cents per ton on crushed rock and gravel and 50 cents on sand.

Much stress was laid by complainants on the fact that there is a commodity rate of 50 cents in Northern California applicable on lime rock from Flint to Tolenas for a distance of 72 miles. This rate was involved in Case No.1730 and the allied case - Pacific Portland Cement Company vs. Southern Pacific Company (24,CRC.370), but the rate was voluntarily established by the carrier and is based upon the fact that during the year 1921 more than 5000 car-loads, weighing over 300000 tons, were transported from Flint to Tolenas; also that this heavy movement of lime rock is to a cement plant where it is manufactured into cement and reshipped to consuming points over the rails of the Southern Pacific Company, thus giving the double haul on the tonnage. To associate this adjustment with the rates on crushed rock to San Diego, where the tonnage

is much smaller and where the carrier receives no second haul does not constitute a proper rate comparison, the circumstances and conditions being entirely dissimilar.

Complainants also compare the applicable rates with rates maintained by defendant for the transportation of fertilizer, forest products, magnesite, sand dust and salt for like distances. These comparisons, covering commodities admittedly of greater value than crushed rock, sand and gravel, although of importance, do not afford a positive basis on which to determine the reasonableness of the rates here assailed, there being no testimony to show the tonnage nor the conditions under which the commodities move.

Defendants urge that the rates on rock, sand and gravel compare favorably with the rates on crushed rock, sand and gravel concurrently in effect via the Southern Pacific, particularly in view of the density of traffic on that company's line and the further fact that the movement from Spring Valley Quarry and Riverview are entirely branch line hauls.

Defendant placed into the record exhibits and testimony showing the difficulties encountered over its Lakeside Branch, occasioned by the grades and curves, the grade on the inbound movement from Spring Valley and Riverview to San Diego having a maximum of 1.95 degrees and on the return movement a maximum grade of 3.5 degrees, which necessitates doubling of the trains. On the branch leading from Otay Junction to Otay Gravel Pit there is a short grade of 2.5 degrees against the loaded movement.

Exhibits were also offered by defendant showing that for the years 1922, 1923 and 1924 its operating expenses and fixed

charges exceeded its gross income in the amount of \$779516.90, \$792606.77, and \$718207.76, respectively.

When consideration is given to the fact that the mileage scale generally in use by the railroads in Southern California covering rock and gravel for distances 25 miles and under is 60 cents per ton, as compared with the rate of 55 cents from Otay Pit and 65 cents from Spring Valley and Riverview, and that the Southern California scale provides for sand a rate of 50 cents for 25 miles and under, as compared with the present rate of 55 cents from all three of the shipping points, it does not appear that the rates of defendant, by the measure of the Southern California rates, have, per se, been shown to be either excessive or unreasonable.

Testimony was offered by complainants dealing with their competitors' alleged lower rates via motor trucks to the consuming centers, and while carriers have the right to voluntarily reduce rates to any figure which will produce something above actual out-of-pocket costs to meet a competitive situation, it is a well established principle that Commissions cannot make such rates predicated merely upon the commercial necessities of the shippers. (Piedra Rock Company vs. Southern Pacific Company 21, CRC.895; Colorado Fuel & Iron Company vs. Director General of Railroads, et al. 57, ICC., 253-255; Anaconda Copper Mining Company vs. Director General of Railroads, et al., 57, ICC, 723-732; Inland Empire Shippers League vs. Director General of Railroads, et al., ICC..59, 321-338).

Upon consideration of all the facts of record, we are of the opinion and find that the rates assailed on crushed rock, sand and gravel from Otay Gravel Pit, Spring Valley Quarry and Riverview to San Diego were not and are not unjust, excessive, unreason-

able nor discriminatory. The complaint will be dismissed.

O R D E R

This case being at issue upon a complaint on file, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that the complaint in this proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 27<sup>th</sup> day of August, 1925.

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*O. A. Levey*  
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*George W. Squires*  
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*Leon Whitell*  
Commissioners