

Decision No. 15471

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
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Valley Building Material Co.,
Complainant,

vs.

The Western Pacific Railroad Company,
The Atchison, Topeka & Santa Fe Railway
Company,
Defendant.

ORIGINAL

CASE NO. 2136

BY THE COMMISSION:

O P I N I O N

Complainant is engaged in the business of selling building materials and supplies, with its principal place of business at San Jose, California.

It is alleged by complaint filed June 17, 1925 that on the assumption that the rate applicable on fire brick from Richmond to San Jose via defendants' lines was the same as in effect via the Southern Pacific Company direct, complainant shipped two carloads of fire brick from Richmond to San Jose via defendants' lines. There was assessed and collected a rate of $8\frac{1}{2}$ cents per 100 pounds, plus a switching charge of \$2.70 per car on the shipment moving January 11, 1923 and a rate of $10\frac{1}{2}$ cents per 100 pounds, plus a switching charge of \$2.70 per car

on the shipment moving June 1, 1923.

The freight charges on the former shipment were paid on January 22, 1923 and on the latter June 9, 1923. These shipments were registered with the Commission on May 20, 1925, our file I.C.32942, thus tolling the statute of limitation on the shipment moving June 1, 1923, but as the statute of limitation was not stayed on the shipment moving January 11, 1923, this Commission is without power to give consideration to that shipment, and no further reference will be made thereto.

Reparation only is sought. Rates will be stated in cents per 100 pounds.

The lawfully applicable rate on the shipment moving June 1, 1923 was a combination rate of $10\frac{1}{2}$ cents made over San Francisco, the route via which the shipment actually moved. The factor from Richmond to San Francisco was $3\frac{1}{2}$ cents, as published in Atchison, Topeka & Santa Fe Railway Tariff 12375-C, C.R.C.496, and 7 cents San Francisco to San Jose, as published in Western Pacific Railroad Tariff 36-F, C.R.C.257. The switching charge of \$2.70 per car was applied in error and resulted in a straight overcharge.

On the date this shipment moved, there was concurrently in effect a rate of 7 cents on fire brick from Richmond to San Jose via the Southern Pacific Company direct. Defendants subsequently established, effective March 31, 1925, in Supplement 22 to Pacific Freight Tariff Bureau Tariff 34-J, C.R.C.329, a rate of the same volume applicable via Oakland, the Southern Pacific Company acting as a bridge carrier at that point, defendants having no physical connection at Oakland. It is stated in the complaint

that defendants' failure to publish this rate via Oakland prior to March 31, 1925 was due to their inability to sooner make suitable arrangements with the Southern Pacific Company whereby the latter line would perform the switching service at Oakland.

Defendants have signified a willingness to make reparation adjustment, and admit that the rate of 10½ cents assessed on this shipment would have been unreasonable had it been physically possible to have forwarded the shipment via the route subsequently established. Therefore, under the issues as they now stand, a formal hearing will be unnecessary.

Upon consideration of all the facts of record, we are of the opinion and find that the rate assessed for the transportation of one carload of fire brick from Richmond to San Jose, moving on June 1, 1923, was excessive under the circumstances and conditions then existing, to the extent it exceeded the subsequently established rate of 7 cents via Oakland.

We further find that complainant paid and bore the charges on the shipment in question and has been damaged to the amount of the difference between the charges paid at the lawfully applicable rate and those that would have accrued at the subsequently established rate of 7 cents, and is entitled to reparation. The complainant should submit a statement of shipment to defendant for check. Should it not be possible to reach an agreement as to the amount of reparation the matter may be referred to this Commission for further attention and the entry of a supplemental order.

O R D E R

This case being at issue upon complaint and answer on file, 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 said opinion is hereby referred to and made a part hereof,

IT IS HEREBY ORDERED that The Western Pacific Railroad Company and The Atchison, Topeka & Santa Fe Railway Company, according as they participated in the transportation, be, and they are, hereby authorized and directed to refund to complainant, Valley Building Material Company, all charges they may have collected in excess of 7 cents per 100 pounds for the transportation of one carload of fire brick, involved in this proceeding, shipped from Richmond to San Jose on June 1, 1923.

Dated at San Francisco, California, this 26th day of September, 1925.

H. B. Brundage
Chairman

Leon Whitell
Commissioners.