

Decision No. 15923

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

H. G. Prince & Company, )  
Hunt Bros. Packing Company, )  
Complainants, )  
vs. )  
Southern Pacific Company, )  
Defendant. )

CASE NO. 2028

E.W.Hollingsworth, for Complainants.

J.E.Lyons, A.W.Whittle, F.W.Mielke, for Defendants.

BY THE COMMISSION:

O P I N I O N

Complainants, H.G.Prince & Company and Hunt Brothers Packing Company, are corporations engaged in the canning business with their principal offices at Oakland and San Francisco, respectively. By complaint filed July 30, 1924 it is alleged that the rate of 7 cents per 100 pounds assessed by defendant during a period of two years immediately preceding that date for the transportation of canned goods, in carloads, from Hayward and San Leandro to Oakland, was and is unjust and unreasonable. Reparation and rates for the future are sought. Rates will be stated in cents per 100 pounds unless otherwise specifically noted.

A public hearing was held at San Francisco on October 19, 1925, before Examiner Geary and the case having been duly heard and submitted is now ready for an opinion and order.

At the time this action was filed, July 30, 1924, there was before the Interstate Commerce Commission a parallel proceeding, Docket No. 15891, H.G. Prince & Company, et al. vs. Southern Pacific Company, involving practically the same issue in connection with interstate movements. Docket No. 15891 was dismissed May 9, 1925. (98 I.C.C. 615). Pending the outcome of the interstate proceeding the instant case, upon request of complainants, was not docketed for an earlier hearing.

The California Packing Corporation, operating canneries at San Leandro and Lorenzo, filed a petition in intervention in support of complainants and also alleged that the applicable rate from San Leandro and Lorenzo to Oakland was unreasonable. Lorenzo is intermediate to Hayward in the movement to Oakland. Intervener, in its petition, requested rates for the future and seeks reparation on shipments alleged to have been made from San Leandro and Lorenzo to Oakland. It was not represented at the hearing, and having offered no proof of shipments, nor presented any evidence with respect to the alleged unreasonableness of the rate to Oakland, there will be no specific finding as to its allegations.

San Leandro and Hayward are situated 9.2 miles and 14.5 miles, respectively, east of Oakland, on defendant's main line. The former point is 0.8 of a mile and the latter 7.1 miles distant from the eastern boundary line of the Oakland switching limits.

H. G. Prince & Company owns and operates canning plants at San Leandro and Fruitvale, the latter point being within

the switching limits of Oakland, and Hunt Brothers Packing Company maintains a cannery at Hayward. The shipments here involved moved from the canneries at San Leandro and Hayward to the plant of H. G. Prince & Company at Fruitvale and, apparently, were forwarded by the latter company. The shipments, consisting of varieties of canned goods not available at the Fruitvale plant, were subsequently consolidated into mixed carloads with other canned goods and reshipped to points in California beyond Oakland. The reasonableness of the assailed rate, insofar as it relates to "proportional" or "storing in transit" shipments, is not in issue in this proceeding.

The applicable rate from Hayward and San Leandro to Oakland during the period here involved was 7 cents. Since the filing of this complaint defendant voluntarily established, effective October 15, 1924, from San Leandro to Oakland, a line haul rate of 55 cents per ton, applicable on freight in carloads, regardless of classification, this to meet the intraterminal switching rate of the Western Pacific Railroad Company, which includes San Leandro within its Oakland switching limits. Therefore, the plea for a rate for the future from San Leandro to Oakland was abandoned at the hearing.

The rate sought by complainants is  $3\frac{1}{2}$  cents, the same as the rate concurrently in effect from Hayward and San Leandro to Oakland on vinegar, pickles, kraut, catsup, mustard and sauces, hereinafter collectively referred to as vinegar and pickles. This rate is not specifically published, but applies from Hayward under the general provisions of Item 4100 of defendant's Freight Tariff 730-C, C.R.C. 2904, which provides that rates on vinegar

and pickles from Hayward to specified territory in California will be the same as the rates on those commodities contemporaneously in effect from San Francisco. This provision was first published in 1904 and was established to place the vinegar and pickle works at Hayward on a rate parity with shippers distributing those commodities from San Francisco. The rate from San Francisco to Oakland was 4 cents, but in 1912 defendant, to meet the competition of the boats and barges operating on the Bay of San Francisco, voluntarily established a  $2\frac{1}{2}$  cent rate on freight, regardless of classification (except livestock), between San Francisco and Oakland, and between San Francisco and Richmond, which under the tariff provisions automatically applied on vinegar and pickles from Hayward to Oakland, 14.5 miles, and from Hayward to Richmond, 25 miles. San Leandro, being intermediate to Hayward in the movement to Oakland, secured the benefit of the Hayward rate. The present rate of  $3\frac{1}{2}$  cents is an outgrowth of the general increases of June 25, 1918 (General Order No. 28), August 26, 1920 (18, C.R.C. 646) and the 10 per cent reduction of July 1, 1922 (68 I.C.C. 676).

Complainants maintain there is no justification for a higher rate on the canned goods here under consideration than on vinegar and pickles. They contend that the  $3\frac{1}{2}$  cent rate is reasonable, per se, for the transportation of other varieties of canned goods, and refer to the rate of 7 cents concurrently maintained by defendant on canned goods to Oakland from Stockton, 85 miles; from Suisun 45 miles, and from Sunnyvale 44 miles; a rate of  $2\frac{1}{2}$  cents to Santa Clara from San Jose, 2.6 miles, and from Luther, 7 miles; and a rate of  $3\frac{1}{2}$  cents from Los Gatos to San Jose, 11 miles and to Luther, 14 miles. Complainants

also compare the assailed rate with switching rates applicable within the Oakland and San Francisco switching limits, but since there is a marked dissimilarity between a switching service and a line haul service, these comparisons are of little value.

Defendant refers to the fact that the rate of 3½ cents on vinegar and pickles from Hayward and San Leandro to Oakland and Richmond was predicated on the rate applicable on freight regardless of classification, concurrently in effect from San Francisco to Oakland and Richmond, and as the latter rate was and is depressed by water competition it should not be used to measure the normal rate on canned goods from Hayward and San Leandro to Oakland. Defendant likewise contends that the 7 cent rate from Stockton and Suisun was originally established to meet water competition and when first published applied non-intermediate, but later, following the action of the Western Pacific Railroad Company, a competitive rail carrier, it became maximum in application and now applies at all points directly intermediate.

Defendant further maintains that the normal basis of rates for the movement of canned goods in California is fifth class, minimum weight 36000 pounds, as provided in the current Exception Sheet and that lower commodity rates as a general rule are established only to meet competitive conditions. Defendant stresses the fact that the applicable fifth class rate from San Leandro and Hayward to Oakland is the minimum class scale rate of 11 cents, subject to a minimum of 36000 pounds, while the rate assessed was 7 cents, with a minimum of 30000 pounds. The latter rate, however, is the same as the fifth class rate without observing the minimum class scale rule.

92

Defendants presented exhibits comparing the assailed rate with fifth class rates and the rates on sugar, paddy rice and other commodities rated fifth class in the current Western Classification or Exception Sheet in effect in California and other States for comparable distances, but offered no positive evidence to prove that the generally applicable basis for the movement of canned goods in California is fifth class.

Complainants have shown that defendant maintains commodity rates on canned goods lower than the applicable fifth class rates. The 7 cent rate from Suisun and Stockton to Oakland and the  $3\frac{1}{2}$  cent rate from San Francisco to Oakland and Richmond are undoubtedly depressed by water competition. (Riverside Portland Cement Company vs. San Pedro, Los Angeles & Salt Lake RR Co. 6 C.R.C. 293-300; San Francisco Chamber of Commerce vs. Southern Pacific Co., et al. 11 C.R.C. 867-877). But defendant has elected to extend the canned goods rates to points not influenced by water competition and, in addition, has voluntarily established and now maintains low commodity rates on canned goods between canneries located in the Santa Clara Valley. It has not been shown in this record that the claimed low rates set forth in exhibits are reasonable, per se, but the action of defendant in voluntarily establishing and maintaining them for a period of years would indicate that they are at least reasonably compensatory, and defendant does not contend otherwise. We have heretofore recognized the right of carriers to maintain rates lower than this Commission could prescribe so long as they provided sufficient revenue to cover out-of-pocket costs and did not burden other traffic. In Case No. 2087, Union Rock Company vs.

Atchison, Topeka & Santa Fe Ry., et al., decided December 11, 1925, Decision No. 15745, the Commission said:

"When rates are attacked it is our duty to see that they are not so high as to be oppressive upon the shipper. Between such rates and rates that cover something more than out-of-pocket costs there is a zone which should be free from judicial interference. The carriers have complete control over rates which fall within this zone \* \* \* \* \*".

In view of the wide disparity between the ton mile earnings under the assailed rate of 7 cents and the ton mile earnings under rates concurrently maintained by defendant on similar traffic in the contiguous territory, and upon consideration of all the evidence in this proceeding we are of the opinion that the rate here under attack clearly is not within the zone which is meant to be free from judicial interference. We conclude and find that the assailed rate from Hayward was, and will be in the future, unjust and unreasonable to the extent it exceeded or may exceed 5 cents per 100 pounds.

We further find that complainant, H.G. Prince & Company, made certain shipments of canned goods from Hayward and San Leandro to Oakland, paid and bore the charges thereon, and has been damaged to the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable and it is entitled to reparation, with interest on all such shipments coming within the jurisdiction of this Commission and within the purview of Section 71(a) of the Public Utilities Act.

The amount of reparation due cannot be determined on this record. Complainant, H.G.Prince & Company, should submit to defendant a statement of the shipments made. Should it not be possible to reach an agreement as to the amount of reparation the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

There is no evidence in this record that complainant, Hunt Brothers Packing Company, made any shipments under the assailed rate.

#### O R D E R

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

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be and it is hereby notified and required to cease and desist on or before February 25, 1926, and thereafter to abstain from publishing, maintaining and applying a rate for the transportation of canned goods, in carloads, from Hayward to Oakland which shall exceed 5 cents per 100 pounds, minimum weight 30000 pounds.



IT IS HEREBY FURTHER ORDERED that defendant, Southern Pacific Company, be and it is hereby notified and required to establish on or before February 25, 1926, upon notice to this Commission and to 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 canned goods, in carloads, from Hayward to Oakland, a rate of 5 cents per 100 pounds, minimum weight 30000 pounds.

IT IS HEREBY FURTHER ORDERED that defendant, Southern Pacific Company, be and it is hereby authorized and directed to pay, with interest, to complainant, H.G. Prince & Company, all charges it may have collected for the transportation of canned goods from San Leandro and Hayward to Oakland, which exceeded the charges that would have accrued at the rate herein found reasonable, provided that this reparation award shall cover only such shipments coming within the jurisdiction of this Commission and within the purview of Section 71(a) of the Public Utilities Act.

Dated at San Francisco, California, this 3rd day  
of February, 1926.

*H. B. Brundage*  
*C. S. ...*

*Leon ...*  
Commissioners.