

Decision No. 16490

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
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Hutchinson Company, Inc.,
Complainant,

vs.

Southern Pacific Company,
Atchison, Topeka & Santa Fe Railway
Company,
Defendants.

CASE NO. 2184

E.W. Hollingsworth, for Complainants,
James E. Lyons and A.L. Whittle, for Defendants.

BY THE COMMISSION:

O P I N I O N

The complainant, Hutchinson Company, is a corporation organized under the laws of the State of California, with its principal place of business in Oakland and the interveners, William Moreing and Cyrus Moreing, are copartners, with their principal place of business at Peters.

By complaint filed October 16, 1925 and as amended, it is alleged that at various times during the months of July and August, 1923 carload shipments of crushed rock were forwarded from Dwight to Peters; that the shipments were moved via the Atchison, Topeka & Santa Fe Railway Company to Stockton, thence Southern Pacific Company; that the freight charges were originally collected

from Moreing and Moreing at rate of \$1.02 per ton; that about February 11, 1925 the Southern Pacific Company collected from complainant, Hutchinson Company, Inc., who was the consignor, undercharge freight bills increasing the rate to \$1.10; that at the time of shipment there was in effect from Dwight to Peters a rate of \$1.02 when the movement was via the Atchison, Topeka & Santa Fe Railway Company to Oakland, thence via the Southern Pacific to Peters; that the rate of \$1.10 charged and collected was excessive, unjust, unreasonable and unduly discriminatory to the extent it exceeded the rate of \$1.02 in effect via the longer route Atchison, Topeka & Santa Fe Railway to Oakland, thence Southern Pacific Company to Peters.

Reparation only is sought. Rates will be stated in cents per ton of 2000 pounds.

A public hearing was held in San Francisco January 14, 1926 and the case having been submitted is now ready for our opinion and order.

The defendants, Southern Pacific Company and Atchison, Topeka & Santa Fe Railway Company, will be hereafter referred to as the Southern Pacific and the Santa Fe respectively.

Dwight is on the Oakland branch of the Santa Fe, 6 miles south of Oakland (40th St.); Peters is a station on the Oakdale branch of the Southern Pacific, 13 miles south of Stockton. The distance from Dwight to Peters via the Santa Fe from Dwight to Stockton, thence Southern Pacific to Peters is 86 miles, made up 73 miles Dwight to Stockton and 13 miles to destination. The distance from Dwight to Peters via the Santa Fe to Oakland, thence Southern Pacific, is 104 miles, being 6 miles from Dwight to Oakland (Emeryville) and 98 miles from Oakland to Peters. At the time the

shipments moved there were two rates in effect, \$1.02 when routed over the long line of 104 miles via the Santa Fe to Oakland, the other \$1.10 when routed the short line via the Santa Fe to Stockton. Here is an unusual rate situation where the lawfully published rate for a 2-line movement of 104 miles is \$1.02 as compared with a rate of \$1.10 for a short line of 86 miles; in other words, between the same points the rate is 8 cents greater over the route where the distance is 18 miles less. The charges were originally assessed on the basis of \$1.02 and the freight bills were paid by consignees at the time of delivery in July, August and September, 1923. Almost two years after completion of the transactions defendants discovered that the shipments having moved via the Santa Fe to Oakland, thence via the Southern Pacific to Peters, the legal rate was \$1.10 and undercharge bills were presented. Efforts to collect from the copartnership of Moreing and Moreing, the consignees, were unsuccessful and the amounts were finally paid by the complainant, Hutcherson Company, who was the consignor.

Complainant in its testimony makes reference to informal reparation docket (I.C.29311), a parallel proceeding, involving shipments of crushed rock from Eliot, on the Southern Pacific, to Harte on the Western Pacific, routed Southern Pacific, Stockton, via which route the legal rate was 90 cents. The shipments could have moved via the Southern Pacific to Lyoth, thence Western Pacific to Harte at a rate of 80 cents. In this situation the Southern Pacific admitted the unreasonableness of the charge because of the route the shipments moved and secured authority on the informal docket to refund to the basis of 80 cents via the Lyoth route, over which the rate was subsequently established.

It is alleged the defendants herein should have accorded

this complainant the same kind of an adjustment as was given in the case of the crushed rock shipments moving from Eliot to Harte.

Defendants introduced testimony to the effect that the rate of \$1.02 sought by the complainant, applicable on traffic moving from Dwight to Oakland via the Santa Fe, thence via the Southern Pacific to Peters, was depressed, established in 1917 to enable the Santa Fe to reach exclusive Southern Pacific points and that the Santa Fe accepted a low division as its portion of the through rate in order to obtain access to particular territory. The rate however was not materially lower than the customary crushed rock mileage scale for a 2-line movement when primarily established to meet water and market competition. Effective September 1, 1923 the rate Dwight to Peters via the Santa Fe to Stockton was reduced to \$1.00, therefore a rate for the future is not now in issue.

Complainant introduced at the hearing as its Exhibit No.2 the bills of lading covering the shipments and these documents show, under the caption Routing "Via Southern Pacific Railway, Stockton", and since the shipments must pass through Stockton to reach Peters they contend it was incumbent upon defendants to have forwarded the shipments to Stockton via the route providing the lowest rate.

It is fundamental in proceedings of this kind, where the routing instructions carried on the bill of lading are incomplete and where the carrier may select one of two routes that the obligation rests with the initial carrier to forward the shipment over the cheapest route consistent with the routing instructions and in this situation it would appear that the Santa Fe should have forwarded these shipments via Oakland at the rate of \$1.02 instead of via

Stockton at the rate of \$1.10, and it is also apparent from this record that the Agent issuing the bills of lading at Dwight and the Agent making the freight bills at Peters were under the impression that the movement through Stockton had been via the low-rated line, Dwight-Oakland-Stockton, instead of Dwight-Stockton direct. It is also apparent that the rate of \$1.10 Dwight to Peters via Stockton direct. 86 miles, is excessive when compared with the rate of \$1.02 Dwight via Oakland and Stockton, 104 miles.

Upon consideration of all the facts of record we are of the opinion and so find that the rate of \$1.10 assessed via the short route was excessive, unreasonable and discriminatory to the extent it exceeded the rate of \$1.02 applicable via the longer route between the same points upon two grounds, first that the incomplete routing instructions obligated the initial carrier to forward via the low rated line and second upon a comparison of the rate of \$1.10 for 86 miles with the rate of \$1.02 for 104 miles. We further find that complainant, Hutchinson Company, Inc. made the shipments of approximately 120 cars of crushed rock from Dwight to Peters, that it paid and bore the excess charges and that it has been damaged to the amount of the difference between the charges paid and those that would have accrued at the rate of \$1.02 herein found reasonable and is entitled to reparation, with interest, on all such shipments. The amount of reparation due cannot be determined on this record; complainant should submit to defendants a statement of the shipments made and 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 should such be necessary.

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 defendants, Southern Pacific Company and The Atchison, Topeka & Santa Fe Railway Company, according as they participated in the transportation, be and they hereby are authorized and directed to refund to complainant, Hutchinson Company, Inc., all charges they may have collected, with interest, in excess of \$1.02 per ton for the transportation of crushed rock involved in this proceeding moving during the months of July and August, 1923 from Dwight to Peters, against which the undercharge bills were paid in February, 1925.

Dated at San Francisco, California, this 16th day of April, 1926.

H. B. Brundage
C. L. Sealey

Leon Whitely

Commissioners.