

Decision No. 16641

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Clover Valley Lumber Company,
Complainant,

vs.

Western Pacific Railroad Company,
Defendant.

CASE NO. 2162

A Larsson, for Complainant,
James S. Moore, Jr., for Defendant,
W.O. Banks, for Standard Oil Company,
N.E. Keller, for Pacific Portland Cement Company, Cons.,
and on behalf of James A. Keller, for Coast Rock
& Gravel Company.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation engaged in the manufacture and sale of lumber and its products with its principal place of business at Loyalton, California. By complaint filed August 28, 1925 it is alleged that the rate assessed by defendant for the transportation of 2 carloads of sand moving from Marysville to Loyalton during the period from April 26, 1923 to July 21, 1923 was unreasonable to the extent it exceeded 7½ cents per 100 pounds. The shipments involved in this proceeding were registered with the Commission on April 2, 1925, File I.C. 32662, thus staying the statute of limitation.

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

A public hearing was held at San Francisco October 29, 1925, and the case having been duly submitted is now ready for an opinion and order.

Marysville is on the main line of defendant and Loyalton on a branch line extending southeast from Hawley. The distance between the two points is 161 miles. The rate assessed and collected was 15 cents, a combination of class and commodity rates over Hawley, the factors being from Marysville to Hawley, a commodity rate of 8 cents in effect from Marysville to Gerlach, Nevada, applied as maximum at Hawley, and Class E rate of 7 cents from Hawley to Loyalton. Some doubt was expressed at the hearing as to whether or not the 8 cent commodity rate from Marysville to Gerlach, Nevada, was lawfully applicable at intermediate points in California. This rate was published in defendant's Local, Joint and Proportional Freight Tariff No.36-F, on file with both this Commission and the Interstate Commerce Commission. In Item 20 of the Tariff there is a provision for the application of rates to unnamed intermediate points, which reads:

"COMMODITY RATES: Except as otherwise specifically provided in connection with individual rates, rates named in this tariff will, in the absence of specific commodity rates, apply to directly intermediate points."

There was no published commodity rate on sand from Marysville to Hawley, but by the provisions of Item 20 there was expressly placed in effect at the latter point and at other unnamed points the commodity rate to the more distant point and

the rates so established were as specific as though they had been actually published to the intermediate points. The Marysville-Gerlach rate was used as a basis at intermediate points in California and the mere fact that it also applied between interstate points cannot be construed to nullify the specific provisions of Item 20. We therefore conclude and find that under the tariff the 8 cent rate from Marysville to Gerlach, Nevada, could not lawfully be exceeded at Hawley, California, and that the charges were correctly assessed and collected by defendant.

Effective March 24, 1924 defendant established on sand, from Marysville to Loyalton, the rate here sought by complainant, namely, $7\frac{1}{2}$ cents.

Complainant contends that the subsequently established rate was reasonable for the service performed at the time the shipments moved and in support of its contention directs attention to the concurrently effective rates on sand of 8 cents from Marysville to Reno, 196 miles; 7 cents from Oroville to Reno, $169\frac{1}{2}$ miles, and $7\frac{1}{2}$ cents Thomasson to Truckee and Floriston, 162 and 177 miles, respectively. The first two named rates apply via defendant's line and the latter via the Southern Pacific Company.

Complainant also directs attention to the distance scale of rates on sand maintained by defendant and the Southern Pacific Company in the territory west of Oroville, and to the basis on the Southern Pacific to points in the Sierra Nevada Mountains, where the distance scale is used, predicated on a constructive mileage of 150 per cent for that portion of the haul east of Roseville. Complainant also contends that if this distance scale were applied to the traffic here involved, using the actual mileage Marysville to Oroville and constructive mileage of 150 per cent Oroville to Loyalton, the rate so made would be $7\frac{1}{2}$ cents.

Defendant interposed no defense with respect to complainant's allegations that the rate assessed was unreasonable; it did urge, however, that this Commission, by formal finding in Application No.5728, Decision No.7983, dated August 17,1920, had declared as reasonable the factors from which the rate here in question was made, hence that under the provisions of Amended Section 71 of the Public Utilities Act was without authority to award reparation. Subsequent to the hearing defendant, by written request dated April 1,1926, withdrew its plea that this Commission was without jurisdiction to award reparation in this particular situation.

Upon consideration of all the facts of record we are of the opinion and find that the assailed rate was unreasonable to the extent it exceeded the subsequently established rate of $7\frac{1}{8}$ cents; that complainant paid and bore the charges on the shipments in question and has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable and that it is entitled to reparation, with interest.

The amount of reparation due cannot be determined on this record. Complainant should submit a statement of the shipments to defendant for check. Should it not be possible to reach an agreement as to the amount of reparation the matter may be submitted to the 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, 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 defendant, Western Pacific Railroad Company, be and it is hereby authorized and directed to refund, with interest, to complainant, Clover Valley Lumber Company, all charges it may have collected on 2 carloads of sand moving from Marysville to Loyalton during the period from April 26, 1923 to July 21, 1923, involved in this proceeding, in the amount of the difference between the charges paid and those that would have accrued at the subsequently established rate of $7\frac{1}{2}$ cents per 100 pounds.

Dated at San Francisco, California, this 4th
day of May, 1926.

H. B. Brandie
C. J. Seavey
Frederick

Commissioners.