Decision No. 17197

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

W. P. Fuller & Company,
Complainant,

vs.

Southern Pacific Company,
Defendant.

CASE NO. 2204

Leonard and Desch, by Fred T.Leonard, for Complainant.
J. E. Lyons, for Defendant.

BY THE COMMISSION:

O P I N I O N

Complainant, a corporation, with its principal place of business at San Francisco, is engaged in manufacturing paints, also selling paints, oils and glass. By complaint duly filed and as amended at the hearing, it is alleged that the rate assessed and collected on 15 tank carloads of linseed oil, as set forth in Exhibit "A" of the complaint and moved during the period from October 21,1922 to March 23,1923 from South San Francisco to Los Angeles, was unjust and unreasonable in violation of Section 13(a) of the Public Utilities Act and unduly preferential and discriminatory in violation of Section 19 of the Act to the extent it exceeded a rate of 31½ cents per 100 pounds. The statute of limitation was tolled on the shipments by registration of the claim with this Commission November 12,1924 under Informal Complaint No.31688.

Reparation and a rate for the future are sought. Rates will be stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at San Francisco May 17,1926 and the case being duly submitted and briefs filed is now ready for our opinion and order.

Complainant's shipments were all made in special tank cars and the lawfully applicable rate was and now is 38½ cents, being the fifth class published in Southern Pacific Company's Tariffs 711-series.

South San Francisco is located on the Southern Pacific 9.3 miles south of San Francisco, is included within the San Francisco switching limits, and is 457 miles from Los Angeles.

Complainant's witness contended that the rate from San Francisco to Los Angeles on the linseed oil in tank cars should not exceed a contemporaneous commodity rate of 31½ cents on linseed oil in packages, and compared the rate sought with a commodity rate of 31½ cents applicable on cocoanut oil in tank cars from San Francisco to Los Angeles and on cottonseed oil in tank cars from Los Angeles to San Francisco. However, cocoanut oil and cottonseed oil admittedly are not competitive with linseed oil.

Complainant was unable to show a regular movement of linseed oil in tank cars and at the hearing its witness testified that only one tank car had moved during the first 4½ months of 1926 from its plant at South San Francisco to Los Angeles. Defendant's Exhibit No.1 discloses that all of the 15 special tank cars employed in the movement of this oil from San Francisco to Los Angeles were returned empty to San Francisco. The actual loaded mileage was 6930 and the empty mileage 6931.6, the slight

difference being due to two of the cars having returned to Oakland; in other words, the empty car mileage was more than 100 per cent of the loaded car mileage, whereas for all freight cars during the same period of time the empty freight car mileage was but 48.97 per cent.

Defendant offered a number of comparative exhibits purporting to show that the rate under attack was not unreasonable and that the rate sought, applying to linseed oil in packages, was depressed, established to meet water competition and, therefore, not applicable at intermediate points. Steamer lines between northern and southern California ports handle linseed oil in packages, but are not equipped and do not handle this commodity in tank cars, therefore the rail carriers have not published a subnormal rate in tank cars, such as was necessary in the establishment of the low rate of 31½ cents for the oil in packages.

Witness for defendant testified that all class and commodity rates between San Francisco and Los Angeles are depressed because of the acute competition of the steamship companies. An exhibit showed that the fifth class rates from San Francisco to points intermediate to Los Angeles are very much higher than the fifth class rate to Los Angeles, The maximum being 66½ cents at Mojave on the Valley line and 60 cents at Chatsworth on the Coast Route, as compared with the fifth class of 38½ cents to Los Angeles. Permission to publish lower rate to Los Angeles than applicable at the intermediate points was first authorized by this Commission February 15,1912 by a preliminary order in Case 214-A and was ratified June 19,1916 by Decision No.3436 (10,C.R.C.354).

Competition with water carriers has been accepted by the Commission as a justification for rates lower than normal, but the existence of water-compelled rates is not, in and of itself, a basis upon which a shipper may demand a rate lower than the carrier finds proper to voluntarily publish to meet the water competition.

The evidence and exhibits show that the assessed rate of 38½ cents for tank car movement, with earnings of 16.85 mills per ton mile for 457 miles, the distance from South San Francisco to Los Angeles, is lower than the ton mile earnings on various similar commodities moving in tank cars for approximately the same distance.

It cannot be said that the depressed rate of 31½ cents applicable on linseed oil in packages, established to meet the active water competition, should be a measure of the rate on shipments in special tank cars where the conditions and circumstances attending the transportation are not similar and where the competing steamship lines are not equipped to transport the bulk commodity in car lots.

To constitute discrimination or preference a carrier must charge one shipper a greater or less amount than another for the transportation of a like kind of traffic under similar circumstances and conditions. To be unjust, discrimination must be unlawful; that is, forbidden by law, and those acts of the carrier which constitute unjust discrimination are questions of fact to be ascertained from the evidence. There was no evidence offered by complainant to support its allegation of undue preference or undue discrimination.

Shippers are entitled to reasonable and nondiscriminatory rates on whatever traffic they ship, but in a situation of

this kind a merely contemporaneous rate on cocoanut oil and cotton-seed oil commodities not in competition with linseed oil are not controlling. A lower rate, 31½ cents, is provided for shipments of linseed oil in packages, which rate has been taken advantage of on several occasions by complainant, but was not employed on the shipments involved for the reason it was more economical to ship in tank cars.

After consideration of all the testimony, exhibits and briefs we are of the opinion and find that the rate charged was not unjust or unreasonable, nor was it preferential or discriminatory. The record is convincing that for the future the fifth class rate is reasonable and proper for the sporadic movement in tank cars.

The complaint will be dismissed.

O R D E R

This case being at issue upon complaint and answers on file, having been duly heard and submitted by the parties, 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 complaint in this proceeding be and the same hereby is dismissed.

Dated at San Francisco, California, this 2d day of December, 1926.

C. L. Seavey

Leon O. Whitsell

Thos. E. Brittain

Commissioners.