KN

Decision No. 17943

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Greening-Smith Company,
Complainant,

vs.

Southern Pacific Company,
Pacific Electric Railway Company,
Defendants.

CASE NO. 2250

Fred C. Bigby, for the Complainant.
C. W. Cornell, for the Defendants.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation engaged as a dealer in building materials and fertilizer with its principal place of business at Norwalk, California.

By complaint filed June 18,1926, and amended at the hearing, it is alleged (1) that 2 carload shipments of cement moving from Pier A, Wilmington, to Norwalk, on August 3,1923, were misrouted by defendants, resulting in the assessing and collecting of higher charges than those lawfully applicable over the route specified by complainant and (2) that the rate of 13 cents per 100 pounds which defendants are endeavoring to assess and collect on 1 carload shipment of cement moving from and to the same points and on the same date is innorrect and contrary to the published tariffs lawfully on file with this Commission.

145

Reparation on the first two shipments and an order to compel defendants to cease and desist from attempting to collect charges in excess of 6 cents per 100 pounds on the third shipment, are sought. Rates will be stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at Los Angeles September 29,1926 and the case having been duly submitted is now ready for our opinion and order.

Pier A, Wilmington, is served exclusively by the Pacific Electric Railway, and Norwalk is on the Santa Ana branch of the Southern Pacific Company, 24 miles from Wilmington. Traffic between the two points may be interchanged either at Wilmington or Los Angeles.

The two shipments involved in the first cause of action moved via the Pacific Electric Railway to Los Angeles, thence Southern Pacific Company, on which a rate of 6 cents was assessed and collected. The lawfully applicable rate via the route of movement, however, was 16½ cents, made by a combination of commodity rates over Los Angeles, the factor from Wilmington to Los Angeles being 6 cents and from Los Angeles to Norwalk 10½ cents. Subsequent to the date of movement defendants collected the existing undercharge of 10½ cents per 100 pounds. The routing inserted by the shipper in the bill of lading covering these shipments provided for movement via "PE-SP". It is complainant's contention that by these instructions the shipments should have been delivered to the Southern Pacific Company at Wilmington instead of at Los Angeles

in which event it is claimed a rate of 6 cents would have been applicable.

The shipment involved in the second cause of action was delivered by the Pacific Electric to the Southern Pacific at Wilmington and moved via the latter line direct to Norwalk. Charges were assessed on the basis of a rate of 6 cents, but subsequent to the date of movement defendants endeavored to collect alleged undercharges in the amount of the difference between the charges paid and those that would have accrued at a rate of 13 cents; the latter, it is claimed, being the lawfully applicable line haul rate of the Southern Pacific from Wilmington to Norwalk. Complainant refused to pay the alleged undercharge and defendants, on July 30,1925, brought action in the Justice Court of Norwalk Township to force payment, but by stipulation it was agreed to submit the matter to this Commission to determine the lawfully applicable rate in effect on the date of shipment.

We believe, however, from the evidence and testimony submitted in this proceeding this Commission is without jurisdiction to consider the allegations raised in the complaint, for the reason it appears that the movement of this cement from Wilmington to Norwalk did not constitute intrastate traffic but was in fact foreign commerce. All three shipments consisted of foreign cement, the two cars involved in the first cause of action originating in England and the one involved in the second cause of action in Belgium. The evidence indicates that while the vessels transporting the cement were in transit, arrangements were made by the ship's agent to dispose of the lading to dealers located in the territory contiguous to Los Angeles

Harbor. The cement here involved was purchased by complainant ex ship's tackle, Wilmington, was loaded directly from the ship to the freight cars and moved to Norwalk without coming to a rest on either the dock or at a warehouse. From the record it appears that from the time the cement left the foreign ports its transportation was not intended to end at Wilmington, but it was known it would be, and in fact it was, ended at points beyond the port.

A somewhat analogous situation was considered by the Interstate Commerce Commission in Woodhead Lumber Company vs. Pacific Electric Railway, 104 I.C.C.751. This proceeding involved the reasonableness of the rate applicable from San Pedro to Los Angeles on cement originating in a foreign country, delivered at East San Pedro, thence reshipped to San Pedro where it was stored in transit and subsequently reforwarded to Los Angeles. Holding that this traffic was under the jurisdiction of the Federal Commission, it was said:

> "So far as the record shows, complainant had no place of basiness at either San Pedro or East San Pedro and did not sell any of the cement at these points or use these points for the purpose of distributing the cement to consumers at other points. All of the cement was intended to be shipped to complainant at Los Angeles. In other words, the intention was that its transportation should not end at San Pedro but that a further movement to a particular point beyond San Pedro would follow the water transportation. That intention was carried out as to these shipments and also, apparently,as to the remainder of the consignment. In the circumstances, it would appear that the foreign character of this commerce was not destroyed by the temporary storage of the shipments at San Pedro."

The United States Supreme Court, in Texas & N.O.R.Co. vs. Sabine Tram Co., 227 U.S.111, had before it the question of

whether or not shipments of lumber moving on local bills of lading from Ruliff,Texas, to Sabine,Texas, for export constituted intrastate traffic. It appears from the facts presented in this case that the lumber was shipped from the Sabine Tram Company at Ruliff, Texas, to the Powell Company at Sabine,Texas, under a local bill of lading and the consignment remained on the dock or in the slips until the vessel chartered by the Powell Company arrived to carry it to foreign ports. The court held this traffic was foreign commerce and in so holding said:

> "The lumber was ordered, manufactured, and shipped for export. And we say 'shipped', for we regard it of no consequence that the Sabine Company had no concern or connection with it after it reached Sabine. Its relation to the shipment was a perfectly natural one, and did not change the relation of the Powell Company to it, and make the lumber other than lumber purchased at Ruliff, and started from there in transportation to a foreign destination. The findings are explicit and circumstantial as to this. * * *. Nor was there a break in the sense of the interstate commerce law and the cited cases, in the continuity of the transportation of the lumber to foreign countries by the delay and its transhipment at Sabine, Swift & Co. v. United States,196 U.S.375, 49 L.ed 518, 25 Sup.Ct. Rept.276, nor, as we have seen, did the absence of a definite foreign destination alter the character of the shipments."

In Baltimore & O.S.W.RR.Co. vs. Settle 260 U.S.166, the court found that shipments of lumber from Oakley,Ohio, to Madisonville,Ohio, originating at interstate points constituted interstate commerce. The lumber moved from Southern points to Oakley. The interstate freight rate was paid to the latter point and delivery was taken on a team track or in the bulk yard. Within a few days, however, and without unloading the cars the lumber was reshipped to Madisonville on local bills of lading.

In disposing of this case Mr. Justice Brandeis, speaking for the court, said:

> "Madisonville was at all times the destination of the cars; Oakley was to be merely an intermediate stopping place; and the original intention persisted in was carried out. That the interstate journey might end at Oakley was never more than a possibility. Under these circumstances, the intention, as it was carried out, determined, as matter of law, the essential nature of the movement; and hence, that the movement through to Madisonville was an interstate shipment. For neither through billing, uninterrupted movement, continuous possession by the carrier, nor unbroken bulk, is an essential of a through interstate shipment. These are common incidents of a through shipment; and when the intention with which a shipment was made is in issue, the presence or absence of one or all of these incidents may be important evidence bearing upon that question. But where it is admitted that the shipment made to the ultimate destination has at all times been intended, these incidents are without legal significance as bearing on the character of the traffic".

After careful consideration of all the facts of record, we are of the opinion and find that jurisdiction to consider the allegations of this complaint is not vested with this Commission. The complaint should be dismissed.

KN

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 preceding this order,

IT IS HEREBY ORDERED that the complaint in this proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 17th day of ~~December~~ January 1929.

H. W. Brundidge

C. L. Seavey

Edmund Scott

Thos. S. Lowell

Commissioners.